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BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES AND ENERGY
IN AND FOR THE STATE OF UTAH

-o0o-

CO-OP MINING COMPANY,)	DOCKET NO. 85-053
)	CAUSE NO. ACT/015/025
Petitioner,)	
)	REPORTER'S TRANSCRIPT
vs.)	
)	
DIVISION OF OIL, GAS, AND)	
MINING,)	
)	
Respondent.)	

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On Thursday, October 24, 1985, commencing at the hour of 10:40 a.m., a hearing was held in the above-entitled matter before the Board of Oil, Gas, and Mining at 355 West North Temple, 3 Triad Center, Suite 302, Salt Lake City, Utah 84180-1203; and said hearing was reported in shorthand by Ronald F. Hubbard, a notary public and certified shorthand reporter in and for the State of Utah (License No. 32).

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A P P E A R A N C E S

Board Members

Gregory P. Williams, Chairman
James W. Carter
Charles R. Henderson
Richard B. Larsen
E. Steele McIntyre

Staff Members

Dr. Dianne R. Nielson, Director
Ronald J. Firth, Associate Director for Oil and Gas
Kenneth May, Associate Director for Mining
John R. Baza, Petroleum Engineer
Keith M. Clem, Geologist, Utah Geological & Mineral Survey
Marjorie L. Anderson, Administrative Assistant

Barbara W. Roberts, Assistant Attorney General
Mark C. Moench, Assistant Attorney General

Carl E. Kingston
Attorney at Law
3140 South Main
Salt Lake City, Utah 84115
For petitioner

I N D E X

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Melvin Coonrod	22	33	
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1 SALT LAKE CITY, UTAH, THURSDAY, OCTOBER 24, 1985, 10:40 A.M.

2 -oOo-

3 CHAIRMAN WILLIAMS: We will turn to Item 3 on the
4 agenda. This is the time and place set for the hearing in
5 Docket No. 85-053, Cause No. ACT/015/025, Co-Op Mining Company,
6 petitioner, vs. Division of Oil, Gas, and Mining, respondent.

7 The petitioner is present represented by Mr. Carl
8 Kingston, and the Division is present represented by Ms.
9 Barbara Roberts.

10 MS. ROBERTS: Mr. Chairman, under the past procedure
11 before this Board, although Co-Op Mining Company is the
12 petitioner in this matter, the Division is the party writing
13 the violation, and we will go first today.

14 MR. KINGSTON: We don't have any objection to that
15 procedure being followed.

16 CHAIRMAN WILLIAMS: Go ahead.

17 MS. ROBERTS: I have two witnesses, one who is pre-
18 sent right now, and one will be later. I'd like to have Mr.
19 Dave Lof sworn.

20 (Mr. David Lof was duly sworn to testify as a
21 witness.)

22 MS. ROBERTS: In addition, Mr. Chairman, I have
23 15 exhibits that I have prefiled and have given to the
24 petitioner, and the petitioner has no objection to any of
25 the exhibits. Would you like me to enter them now or as I



1 go along?

2 CHAIRMAN WILLIAMS: As you go along.

3 MS. ROBERTS: All right.

4 CHAIRMAN WILLIAMS: Is there need for opening
5 statements of any sort?

6 MS. ROBERTS: There are four violations that are
7 being petitioned here. The first one, N85-4-8-2, we probably
8 should take that all the way through first for continuity.

9 Then the next two, N85-4-13-1 and C85-4-4-1 should
10 be taken together.

11 The cessation order is a failure to abate cessation
12 order.

13 And then the final one, C84-7-1-1 should be taken
14 on its own all the way through.

15 CHAIRMAN WILLIAMS: All right.

16 MS. ROBERTS: I'd like to make a short opening
17 statement. The Violation in 85-4-8-2 was issued on March
18 12, 1985, for failure to maintain sediment controls in such
19 a manner as to prevent additional contributions of suspended
20 solids to streamflow or runoff outside the permit area.

21 Now, as required in the statute, 40-10-17(2)(j)(ii),
22 operators must use the best technology currently available
23 to prevent additional contributions to suspended solids to
24 streamflow outside the permit area.

25 I have passed out a copy of the coal statute,



1 40-10. Those are the blue sheets. I have passed out copies
2 of the pertinent portion of the coal regulations that I will
3 be referring to. That's that thick yellow book that you nor-
4 mally have.

5 Now, the State will prove in this violation that
6 in fact there was an iced over culvert that was leading to
7 a sediment pond from the disturbed area that was transmitting
8 runoff from the disturbed area to the sediment pond; that
9 this iced over condition was preventable using readily avail-
10 able equipment; that the events occurring as a result of the
11 iced over culvert resulted in sediment laden water entering
12 the clear water diversion ditch, bypassing the sediment pond
13 and flowing into Bear Creek; that this water most likely en-
14 tered Bear Creek; that the sediment contributions of this
15 stream is a violation of the statutes and the regulations;
16 and that the violation was caused as a result of knowing and
17 intentional conduct by Co-Op employees or its agents.

18 MR. KINGSTON: We will reserve opening statements.

19 MS. ROBERTS: I'd like to call as my first witness
20 Mr. Dave Lof.

21 DAVID LOF

22 called as a witness on behalf of the respondent,
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MS. ROBERTS

25 Q Mr. Lof, would you state your name, place of employment,



1 and business address for the record, please.

2 A David Lof. I am employed by the Utah Division of Oil,
3 Gas, and Mining. The business address is 3 Triad Center,
4 Salt Lake City, Utah.

5 Q What position have you held with the Division?

6 A Mining field specialist.

7 Q For how long?

8 A Four and a half years.

9 Q As an inspector, were you assigned to the Co-Op Mining
10 Company's Bear Creek Mine?

11 A Yes, I was.

12 Q And for what period of time?

13 A From October of 1984 until the present.

14 Q Approximately how many times have you been on the site
15 prior to the issuance of the violation?

16 A Prior to issuance of the violation, approximately seven
17 to eight times.

18 Q Did you conduct an inspection on March 7, 1985?

19 A Yes, I did.

20 Q Would you describe what you observed with regard to the
21 culvert at issue?

22 A I found that the culvert, which is supposed to convey
23 disturbed area runoff to the sediment pond on the operator's
24 property was blocked by ice. The blockage was at least
25 85 percent.

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1 Q What action did you take as a result of your observances?

2 A I issued Notice of Violation N85-4-8-2, No. 2 of 2.

3 Q Why did you issue that violation?

4 A I issued it because the operator had failed to maintain
5 a sediment control to insure that all disturbed area runoff
6 would be passed through a sediment pond and to insure that
7 additional suspended solids would not be contributed to the
8 streamflow runoff outside the permit area.

9 Q For what purpose were you on the property that particular
10 day? Why were you conducting an inspection? Did you have
11 some indication?

12 A I had received a telephone call from Mr. Coonrod on
13 February 25, 1985. He indicated at that time that they had
14 problems with the culvert. In addition, I had a phone call
15 from OSM Inspector Frank Attencio--

16 MR. KINGSTON: Object to any conversation from the
17 OSM inspector, Mr. Chairman.

18 MS. ROBERTS: He has not stated anything that the
19 conversation has mentioned at this point.

20 CHAIRMAN WILLIAMS: Keep going.

21 A I was informed that there was a problem with the culvert.

22 MS. ROBERTS: I'd like to have Mr. Lof show some
23 slides of the area for the Board's information.

24 (Lights off. Projector on. Slide projected.)

25 THE WITNESS: This slide is strictly for illustrative

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1 purposes. It was not taken at the time of the inspection.
2 This slide shows the area which contributed or is supposed
3 to contribute to the sediment pond. The area which is included
4 in the rough area is this road area here. The pad area of
5 the scalehouse. The scalehouse is right here. The scales
6 in front of the scalehouse. The cats. Diesel pumps.

7 The sediment pond is located immediately to the
8 west of the scalehouse. The culvert in question is located
9 across from the sediment pond on the other side of the road.
10 There is an undisturbed diversion or clear water diversion
11 which runs along the inside of this road. Along the outside
12 here is protected from the disturbed area runoff by a berm.
13 The disturbed area runoff in this area follows down the road.
14 It follows and then crosses--also it crosses this pad. It
15 follows along the berm.

16 (New slide.)

17 This is a picture of the culvert in question at
18 the date--upon the day of my inspection. I was accompanied
19 on the inspection by Tom Munson, hydrologist. This is the
20 culvert in question. This was--this is the amount of the
21 opening that was left where the entire culvert is approximately
22 this area here (indicating).

23 It was filled with ice. It was quite solid. There
24 is coal fines in the area. This is the clear water diversion
25 which is immediately behind the disturbed area runoff. This



1 is bermed off in this area to prevent disturbed area runoff
2 which is supposed to go into the culvert from entering the
3 clear water diversion.

4 (New slide.)

5 The runoff which was diverted past the culvert inlet
6 which I just showed you was passed to this culvert (indicating).
7 This is a clear water diversion. The culvert which conveys
8 the clear water underneath the road, and then into Bear Creek,
9 which is a perennial stream. This picture was taken on the
10 same date as the inspection.

11 (New slide.)

12 Immediately or several feet below the culvert outlet--
13 or the culvert which I just showed you, the clear water
14 culvert--the operator had placed a silt fence and a U-shaped
15 straw bale, the purpose of which was to try and control sedi-
16 ment going into the stream, which is located back to this
17 area here (indicating). You will notice right here--I'll focus
18 this a little better--this is a hole under the silt fence,
19 so that the water could have passed under the silt fence.
20 The silt fence was ineffective at the time of my inspection.

21 This is the silt fence here you can see. This is
22 the straw bale behind the silt fence. The stream is in this
23 location. You will note the coal fines sediments, some of
24 which have collected behind the straw bales. You will also
25 note that the runoff can pass around either side of this straw



1 bale, therefore rendering this ineffective. And this picture
2 was taken on the date of my inspection.

3 (Lights on. Projector off.)

4 MS. ROBERTS: Mr. Chairman, I would at this time
5 like to introduce Exhibits 1 and 2. We will be discussing
6 those. No. 1 is a copy of the NOV that was issued on that
7 date, and Exhibit No. 2 is a copy of the inspector's state-
8 ment and report.

9 Q (By Ms. Roberts) Mr. Lof, prior to the issuance of the
10 NOV, had you discussed the condition of the culvert with any-
11 one at Co-Op Mining?

12 A Yes, I had discussed the condition of the culvert with
13 the operator during a telephone conversation on February 25.

14 Q Had you discussed this with anyone else, this issue?

15 A Yes. I had discussed it with OSM Inspector Frank Attencio
16 in a telephone conversation on the morning of February 27.

17 Q Will you turn now to Exhibit No. 2 in your inspector's
18 report documenting these conversations.

19 A Would you like me to read this from my report?

20 MS. ROBERTS: Now, this, members of the Board, would
21 be the inspector's report for 85-4-8-2, and five pages into
22 that document. It starts out at the top, "Excerpt from Bear
23 Canyon memo for 3-7-85."

24 CHAIRMAN WILLIAMS: How many pages is the notice
25 itself?

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for # 3-7-85/0437.85 ↓ Excerpt

1 MS. ROBERTS: The notice itself covers three pages.
2 There may or may not be a cover letter. Then there is a docu-
3 ment entitled, "Event Violations and Inspector's Statement."

4 CHAIRMAN WILLIAMS: And that's part of the NOV?

5 MS. ROBERTS: No. That is part of Exhibit No. 2.

6 CHAIRMAN WILLIAMS: Thank you.

7 MS. ROBERTS: If I may, Mr. Chairman, I'd like to
8 have Mr. Lof read this from his inspector's statement for
9 that period of time.

10 CHAIRMAN WILLIAMS: Beginning on which page? Page
11 2?

12 MS. ROBERTS: Right. It is entitled, "Page 2".

13 CHAIRMAN WILLIAMS: All right.

14 MS. ROBERTS: Starting at the bottom, entitled,
15 "Scalehouse Catch Basin Cross Culvert."

16 CHAIRMAN WILLIAMS: All right.

17 THE WITNESS: "During a telephone conversation with
18 Mr. Coonrod of Co-Op Mining Company on February 25 of 1985,
19 Mr. Coonrod informed me that the cross culvert under the road
20 to the catch basin or sediment pond was partially blocked
21 with ice. He asked if it would be all right to divert the
22 disturbed area runoff into the adjacent undisturbed diversion
23 or clear water diversion while he tried to clear the ice from
24 the culvert. I specifically told Mr. Coonrod not to divert
25 the disturbed area runoff into the undisturbed diversion or



1 clear water diversion. I explained to him that one of the
2 best things that he could do to try and clear the ice from
3 the culvert was to allow the water to continue to run through
4 the culvert. I told him to try to open up the culvert and
5 to place straw bales and silt fence in the undisturbed diver-
6 sion below the culvert inlet just in case some of the dis-
7 turbed area runoff happened to bypass the culvert in question.
8 He said that he had already installed straw bales and silt
9 fence and that he was going to try to thaw the ice using
10 a salamander," which is a heater used in construction projects.
11 "On February 27, 1985--"

12 MR. KINGSTON: I object to that part of it, your
13 Honor. That's with regards to the conversations between
14 Mr. Lof and the OSM inspector.

15 CHAIRMAN WILLIAMS: Well, it may be hearsay. It's
16 part of the physical document. So we will receive it for
17 that purpose.

18 THE WITNESS: "On February 27, 1985, OSM Inspector
19 Frank Attencio called me from Price and informed me that Mr.
20 Coonrod had reached the berm and directed that the disturbed
21 area runoff into the undisturbed or clear water diversion
22 and was passing it through a silt fence and straw bale.
23 Because Mr. Attencio viewed the situation, the Division re-
24 ceived 10-day notice X-85-02-031-02 on March 4, 1985."

25 Q (By Ms. Roberts) So, Mr. Lof, in your opinion, Co-Op



1 Mining Company was well aware of the status of the culvert
2 and the condition of the culvert?

3 A Yes.

4 MS. ROBERTS: I'd like to now discuss with you
5 the civil penalties portion of the Notice of Violation.
6 Members of the Board, I have provided you with copies of
7 the rules, and that's beginning on page 279 of that white
8 handout I gave you: how assessments are made, history points,
9 seriousness, negligence, et cetera, for the civil penalties.

10 CHAIRMAN WILLIAMS: Which page?

11 MS. ROBERTS: Page 279. First of all, we will not
12 discuss the history of previous violations. That is fairly
13 well documented and specifically explanatory. The seriousness
14 is broken into two portions: probability of occurrence, and
15 damage.

16 Q (By Ms. Roberts) Mr. Lof, with regard to probability
17 of occurrence, based upon your experience as an inspector and
18 your knowledge of this particular area, what in your opinion
19 is the probability that sediment laden water entered Bear
20 Creek?

21 A It is likely. The culvert was blocked, as evidenced at
22 the time of my inspection in very close proximity to Bear
23 Creek.

24 MS. ROBERTS: Now, the Board will notice that with
25 regard to seriousness, there are several points that may be



1 assessed anywhere from none to insignificant, unlikely, and
2 likely, and then occurred. That's on page 281 of that handout.

3 I would like to admit Exhibits 3 and 4, which are
4 proposed and finalized assessments for this violation. In
5 the proposed and finalized, the points assessed for serious-
6 ness are 14, which puts it in the high end of likely that
7 damage had occurred.

8 Q (By Ms. Roberts) Mr. Lof, considering that 14 points
9 were assessed for this violation for seriousness, do you con-
10 cur with the assessment officer's report on that matter?

11 A Yes, I do.

12 Q With regard to the extent of damage, which is part No.
13 2 of the seriousness category, in your opinion would the dam-
14 age to the environment extend off the site?

15 A Yes, it would. It could easily pass into Bear Creek.

16 Q Is that a perennial stream?

17 A Yes, it is.

18 MS. ROBERTS: Again, on page 281 there are points
19 that can be assessed for damage with regard to whether the
20 damage stayed onsite or extended offsite. In this particular
21 case, 21 points were assessed for damage extending offsite
22 the permit area.

23 Q (By Ms. Roberts) Mr. Lof, do you concur with the assess-
24 ment's officer report on this?

25 A Yes, I do.



1 Q With regard to the next category, which is negligence,
2 Mr. Lof, do you recall your previous testimony with regard
3 to Co-Op's knowledge of the blocked culvert of the violation?

4 A Yes.

5 Q With regard to the assessment of points for negligence
6 on this violation, do you concur with the assessment officer's
7 report that this violation was the result of reckless, knowing,
8 or intentional conduct?

9 A Yes.

10 Q Would you explain your reasoning for your concurrence?

11 A The operator called me, knowing that he had a problem
12 with the culvert; asked if he could breach the berm. I told
13 him no, to continue leaving water going through the culvert
14 to try and clear it up. He also discussed the possibility
15 of using some kind of a heating element, which is a propane
16 heater of some sort, to clear the ice.

17 In addition, they received a 10-day notice from the OSM
18 inspector, at which time they were fully aware of the fact
19 that they had a problem with the culvert. Yet, by the time
20 I had gotten to the mine site, they still had not cleared the
21 culvert.

22 Q What was Mr. Coonrod's response to the blocked culvert
23 in your telephone conversation on February 25? What was his
24 action as a result of the blocked culvert?

25 A What did he do following our--



↓ yet/it

1 Q Yes.

2 A He breached the berm, which I told him to leave intact.

3 MS. ROBERTS: I have a letter marked Exhibit 5 from
4 Mr. Coonrod addressed to Dave Lof. I would like to admit that
5 into evidence at this time.

6 CHAIRMAN WILLIAMS: What's the date?

7 MS. ROBERTS: The date is March 21, 1985. Beginning
8 at the bottom paragraph of that first page is the violation
9 which we're discussing today.

10 Q (By Ms. Roberts) Mr. Lof, would you just discuss what
11 this letter--did Mr. Coonrod tell you that he had in fact
12 breached the berm in this letter?

13 A Yes. In the letter he stated that after having talked
14 to me and trying to contact my supervisor, Joe Helfrich, he
15 decided on his own to divert the flow into the clear water
16 ditch.

17 Q Mr. Lof, how did Co-Op ultimately abate this violation?

18 A They used a type of a heater to put inside of the culvert
19 to melt the ice.

20 Q How long did you give the company for abatement?

21 A They had approximately a week from the date of receipt
22 of the violation to abate the violation.

23 Q How long did they take to abate that violation?

24 A I don't know; but when I returned to the site to conduct
25 a follow-up inspection, the violation had been abated. I



1 believe that it was March 22. The abatement deadline given
2 was March 21.

3 Q So the fact that there are no good faith points awarded,
4 do you concur with that part?

5 A Yes, I do.

6 Q Why do you concur with that?

7 A The operator had made no extraordinary attempts to abate
8 the violation. They used equipment that was readily available
9 to abate the violation. It was normal compliance.

10 MS. ROBERTS: Normal compliance. If the Board will
11 look at page 282 of that handout on the regulations, you will
12 notice that good faith points are awarded to subtract from
13 the originally assessed points for the operator's actions af-
14 ter the violation has been issued, and normal compliance is
15 zero good faith points.

16 Q (By Ms. Roberts) Mr. Lof, in your opinion could Co-Op
17 have kept this culvert clear?

18 A Yes, I believe they could have by proper snow removal
19 practices, by keeping the culvert inlet clear of snow and ice
20 as the snow and ice accumulate; also, they could have done
21 what they eventually did to abate the violation by placing
22 a heater on and off at different times when they noticed a
23 problem to control the ice buildup. They could have--other
24 operators have run water through their diversions or culverts
25 in order to melt the ice on their properties.

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↑ accumulate;

1 Q In your opinion, has Co-Op used the best technology
2 currently available to keep contributions of sediment from--

3 A No, they have not.

4 MS. ROBERTS: --from the stream? Thank you. I have
5 no further questions of this witness on this issue.

6 CHAIRMAN WILLIAMS: Mr. Kingston.

7 CROSS-EXAMINATION BY MR. KINGSTON

8 Q Mr. Lof, when you made your inspection, as I think the
9 slides you showed us illustrated, there was not any water cir-
10 cumventing the culvert, was there?

11 A No, there was not.

12 Q So you actually didn't see any water running from the
13 disturbed area into the Bear Creek channel?

14 A No.

15 Q And your inspection, as a matter of fact, was some ten
16 days after the problem was pointed out to you by Mr. Coonrod?

17 A The date of the inspection was--

18 Q March 7.

19 A --March 7, 1985.

20 Q And your--

21 A I was contacted by Mr. Coonrod on February 25.

22 Q Which is ten days, two weeks, sometime in that time
23 frame?

24 A Yes.

25 Q Does the Division receive copies of Notices of Violation



1 issued by the OSM?

2 A Yes, they do.

3 Q In this particular case, did you receive a copy of any

4 notice cited by the OSM for that condition that they inspected?

5 A I received a 10-day notice from the OSM inspector. They

6 do not issue violations.

7 Q They do not issue--

8 A At that time.

9 Q They do not issue violations?

10 A It depends upon--well, in this case, they did not issue

11 a violation. They issued a 10-day notice.

12 Q They do have the prerogative, though, do they not, to

13 issue a violation on site at an inspection?

14 A No, they do not.

15 Q You're sure of that?

16 A Yes.

17 Q And at the time you made the inspection, you, of course,

18 did view the bale of hay and fence that had been installed,

19 and there wasn't any water running either under the bale at

20 that time or around the fence, was there?

21 A That is correct.

22 Q Do you recall in your conversation with Mr. Coonrod--this

23 would be the February 25 conversation by phone--telling Mr.

24 Coonrod to submit a plan to correct the violation, to correct

25 the problem?



1 A I suggested that if he could not get the culvert clear
2 in a manner in which we discussed and if he wanted to divert
3 the disturbed area runoff into the clear water diversion, then
4 at that point he should submit a plan requesting that they
5 be allowed to divert the disturbed area runoff into the undis-
6 turbed clear water diversion.

7 Q And you've written into your report that your comment
8 was that the better way was to continue to allow the water
9 to run through and perhaps that would melt or somehow dissi-
10 pate the ice?

11 A I suggested that would be a--

12 Q Do you recall Mr. Coonrod asking that he wanted to talk
13 to Joe Helfrich?

14 A I do not believe that he asked me at that time that he
15 could speak to Mr. Helfrich.

16 Q And you didn't in fact try and contact Mr. Helfrich or
17 relay the call to his office?

18 A No.

19 MR. KINGSTON: No further questions.

20 REDIRECT EXAMINATION BY MS. ROBERTS

21 Q I have one question. Mr. Lof, to your knowledge in the
22 four and a half years that you worked for the Division of Oil,
23 Gas, and Mining, has the Division ever authorized runoff from
24 an undisturbed area to flow into a clear water ditch and, thus,
25 directly into a perennial stream?

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1 A No.

2 MS. ROBERTS: Thank you. That's all I have.

3 CHAIRMAN WILLIAMS: Does the Board have any questions
4 of this witness? Thank you.

5 Do you have any objection to the five exhibits,
6 Mr. Kingston?

7 MR. KINGSTON: None.

8 CHAIRMAN WILLIAMS: We will receive Exhibits 1
9 though 5.

10 (Exhibits 1 through 5 were
11 received in evidence.)

12 MS. ROBERTS: I'd like to save my closing arguments
13 on each of these violations to the end. Is that all right?

14 CHAIRMAN WILLIAMS: Do you wish to--

15 MR. KINGSTON: I think it might be more convenient
16 for the Board if I call my witnesses at this time.

17 CHAIRMAN WILLIAMS: On this violation?

18 MR. KINGSTON: While they're still fresh on your
19 mind.

20 CHAIRMAN WILLIAMS: Do you have any objection?

21 MS. ROBERTS: No.

22 CHAIRMAN WILLIAMS: You have no further witnesses?

23 MS. ROBERTS: No. No further witnesses on this
24 matter.

25 MR. KINGSTON: I would like to call Mel Coonrod.

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1 CHAIRMAN WILLIAMS: How many witnesses do you have
2 today?

3 MR. KINGSTON: I have two witnesses.

4 CHAIRMAN WILLIAMS: Let's have them both sworn.

5 MR. KINGSTON: The one witness will only testify
6 regarding one of the violations.

7 CHAIRMAN WILLIAMS: Let's have them sworn.

8 (Two witnesses were duly sworn to testify.)

9 MELVIN COONROD

10 called as a witness on behalf of the petitioner,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. KINGSTON

13 Q Mr. Coonrod, would you give me your name and address for
14 the record, please.

15 A Melvin Coonrod. I reside at P. O. Box 358, Elmo, Utah.

16 Q What is your employment, Mr. Coonrod?

17 A I am employed as a consultant to the coal mining industry
18 and in a salaried position with Co-Op Mine in charge of com-
19 pliance and permitting.

20 Q Do your duties with Co-Op Mining Company involve seeing
21 that they are in compliance with the Division's regulations
22 regarding surface operations?

23 A That is one portion of my job responsibility, yes.

24 Q Were you assuming those duties or working in that capacity
25 in March of 1985?



1 A Yes.

2 Q Did you accompany Mr. Lof on the inspection that he
3 testified to earlier today regarding the plugged up culvert?

4 A I don't believe that I was present during the March 7
5 inspection. I accompanied Mr. Lof on an inspection prior
6 to that and the one following that.

7 Q Do you recall having a conversation with Mr. Lof over
8 the telephone about that situation on or about February 25?

9 A Yes. I arrived on the property at 8 o'clock. It had
10 been excessively cold for the previous week. We were having
11 problems with several of our culverts being obstructed with
12 ice. I noted that that culvert was totally blocked and there
13 was approximately two to three feet of ice built up over the
14 head of the culvert.

15 As was normally the case, the water would not flow until
16 mid-afternoon when the sun had sufficiently warmed up the
17 surface and had coal on it to melt. I called Mr. Lof, ex-
18 plained my problem, and indicated that we had a plugged cul-
19 vert, that I didn't know how to handle the situation, but
20 we had to temporarily divert the water in order to chop the
21 ice down to get to where we could gain access to the culvert
22 mouth. And that was approximately--well, it wasn't approxi-
23 mately--that was at 8:10 a.m.

24 Q Before you continue on with your conversation with Mr.
25 Lof, Mr. Coonrod, perhaps it would be helpful to the members



1 of the Board if you would explain why it would be necessary
2 to divert the water in order to get to the ice. I don't know
3 if the pictures fully illustrated that problem.

4 A Okay. If the Board could imagine, we have the situation,
5 and all coal mines have a situation, coal dust is very preva-
6 lent on a coal property. In the wintertime, at that time
7 of year the daytime temperature probably never got above
8 freezing. It was in the low 30's, upper 20's, in the late
9 afternoon. The coal dust settles on top of the snow, the
10 ground; and due to solar absorption it heats up that surface
11 and melts snow and ice. This normally occurs on a clear day
12 when you've got, you know, maximum solar radiation, and that's
13 the only time during those cold days that water will actually
14 flow.

15 The situation we have is the water flows on the surface,
16 drops into about a 4--or, at that time, approximately 2-foot
17 depression and then into a culvert. The moment that water
18 descends and is no longer exposed to the sun, and especially
19 when it drops into a culvert which is metal, which is two
20 feet under the ground, it just almost instantaneously freezes.
21 And in the course of several days, that ice gradually builds
22 up in excessive layers.

23 This is not a problem uncommon to all coal mines. I've
24 worked for other properties, and it's a very common winter
25 occurrence. The design capacity of any diversion is based



↓ Erase "Well"
↓ Every culvert on

1 on a 10-year 24-hour event, meaning a major thunderstorm or
2 a massive amount of water flowing at one time. I think it's
3 ludicrous for any of us to believe that you're going to have
4 a 10-year 24-hour event in the middle of March with tempera-
5 tures below freezing.

6 In the wintertime we try to maintain the culverts so that
7 we can get some flow through them. Every culvert on
8 every coal property I think without exception that has water
9 available to it will have ice in it in the wintertime.

10 Q Now, with regard to this particular culvert, was that
11 designed using proper figures and engineering devices and
12 the best technological information you had available?

13 A That system was designed by Horrocks & Corollo and--yes,
14 it was, and it was approved by the Division.

15 Q Had you submitted a plan to the Division?

16 A Yes, approved in the scalehouse modification.

17 Q In fact, was it constructed or put in place pursuant
18 to that plan that had been approved?

19 A That is--yes, it has.

20 Q Now, if you will, continue on with your conversation
21 with Mr. Lof. This is a telephone conversation of February
22 25.

23 A Yes. I called Mr. Lof, and I didn't indicate the culvert
24 was partially obstructed, but I said the culvert is in fact
25 obstructed. I said in order to clear it I've got to chop



1 out the head of the culvert. The culvert was totally full
2 of ice, if you can imagine. A solid core. I have to chop
3 out the head of the culvert. While I'm doing this, I need
4 to divert the runoff to allow us access to the top of the
5 culvert.

6 The only place it could go was, No. 1, it would continue
7 to run down the road and get into a clear water ditch for
8 a mile and a half down the property; or, No. 2, I could di-
9 vert it directly into the clear water ditch adjacent to the
10 culvert and put in the necessary safeguards to keep the water
11 from flowing to the creek.

12 At that time that ditch had 18 inches of solid ice in
13 it. I chopped down into the ice and installed the silt fence
14 four to five inches into solid ice and locked it in. I did
15 likewise with the straw. The straw was sitting on solid ice
16 and well blocking the ditch.

17 Two weeks later, when Mr. Lof elected to come up and
18 look, we had had some warm weather. That ice had melted,
19 resulting in a hole under the silt fence as the ice, you know,
20 melted away. And a passage--I'm not aware of any passage
21 around the straw, but according to Mr. Lof the water could
22 inadvertantly go around the straw.

23 During the time we were working on the culvert, there
24 was no water that reached Bear Creek. None whatsoever. We
25 watched that closely.



1 Anyway, Mr. Lof said, "Submit a plan."

2 I said: "Dave, let's be reasonable. I have the problem
3 today. I've got water that's going to run in three hours.
4 I couldn't even get you a plan; and, based on past performance,
5 it would be next summer before I had it approved." I said,
6 "I need to take action immediately." I said, "Let me speak
7 with Joe Helfrich."

8 Q Who is Joe Helfrich?

9 A Joe, as I understand it, is Dave Lof's immediate
10 superior. I was transferred to--I believe to Betty and asked
11 to speak to Mr. Helfrich, who was in a meeting. I asked Betty
12 if he would please call me back as soon as he was available,
13 that I needed to talk to him about a problem.

14 That was at 8:30 a.m. We did not divert the water at
15 that time. At 4:30 that afternoon, I called again, and Mr.
16 Helfrich had left the office. I had not received a call from
17 him.

18 The following morning, on the 26th, we had water running
19 down the road. So we had to take some sort of aggressive
20 action to clear the culvert. We chopped it out that day as
21 best we could, and we thought we could see water actually
22 seeping in and going in the culvert. According to Mr. Lof
23 and his infinite wisdom and construction knowledge, that
24 should have thawed the ice. However, the next morning we
25 had a solid block level with the road. So that day we



1 diverted the water into the clear water diversion ditch.

2 CHAIRMAN WILLIAMS: On the 26th?

3 A Yes, sir.

4 Q (By Mr. Kingston) Did the inspectors from the OSM come
5 and visit you on the 26th?

6 A Yes. I believe that they inspected us that day.

7 Q Did they review the situation?

8 A I took them out and showed them the problem that I had.
9 I explained the situation that I had had in trying to get
10 some kind of approval to divert the water to correct the pro-
11 blem. I don't think it's standard procedure for an operator
12 to call up the Division and inform them of a violation.
13 Relative to good faith, I was doing everything in my power
14 to comply and rectify the problem.

15 Q Did the inspectors at OSM ever offer any suggestions
16 that you ought to implement other than what you were already
17 doing?

18 A No. In fact, I can't remember the conversation exactly,
19 but I had the impression that they had felt I had taken a
20 prudent course of action, about the only action we could take.

21 Q On the 26th you diverted the water. What did you do
22 about the ice in the culvert?

23 A At that time we were able to chop down and excavate a
24 portion of the culvert, actually chop the ice out. We put
25 a salamander at that end of the culvert and covered it with



1 plywood and insulation. That's a butane heater.

2 The other end of the culvert, we chopped the ice back
3 and put a salamander in there. By doing that we were able
4 in about a 48-hour period of continual operation of the two
5 heaters to get the culvert free of ice so it would run norm-
6 ally.

7 Unfortunately, it's a constant and a reoccurring situa-
8 tion during the entire winter season. The ice would continue
9 to build up in the culvert, and we had a salamander heater
10 there at all times, and we ran it on a frequent basis.

11 CHAIRMAN WILLIAMS: So that's how you prevented
12 the problem from occurring subsequently?

13 THE WITNESS: In that particular culvert, yes.

14 Q (By Mr. Kingston) So when Mr. Lof came down on the 7th
15 of March, was that the same ice buildup that you questioned
16 him about on the 25th of February? Was it still the same
17 ice that was there, or had you corrected the problem?

18 A No, we had it totally free. It would build up almost
19 daily to the extent that Mr. Lof observed that day. That
20 day we did have the salamander there. And I believe it was
21 there and in operation.

22 Q So even following this so-called advice of Mr. Lof and
23 allowing fresh water and clear water to continue to run over
24 the ice, it would not in fact dissipate the ice, but continue
25 to build up?



1 A It actually made the situation worse. It would freeze
2 within a matter of a few feet of the end of the culvert.
3 Q How long, Mr. Coonrod, was the water running outside
4 of the culvert?
5 A You mean into the clear water diversion?
6 Q Into the clear water diversion.
7 A I don't remember, Carl. It was a--it's a relatively
8 short period. I would think that normally it would thaw
9 adequately to run mid-afternoon, 2 or 3 o'clock, and then
10 we're in a deep canyon. So probably by 4, the sun was down
11 enough to where it would freeze again.
12 Q For how many days?
13 A I believe we only had--in fact, the day OSM was there
14 we had the problem corrected. So it was just--
15 Q So just the one day?
16 A One day and the portion of the day that OSM was there.
17 Q How much water actually escaped outside the culverted
18 area?
19 A I did not measure the flow, but I do hydrologic monitor-
20 ing. There are three other mines in the area. I would say
21 that it was in the neighborhood of--I doubt it was in the--I
22 doubt it would exceed tenths of gallons per minute. Probably
23 more in hundredths of gallons per minute.
24 A stream of water like unto the size of that pen would
25 flow down into the clear water ditch.



1 Q How far did it go?

2 A I personally never observed it even making it through
3 the next culvert that went under the road. My impression
4 was it was freezing in that culvert like it had in the cul-
5 vert we were diverting it to.

6 Q Your testimony was it did not at anytime reach Bear
7 Creek?

8 A No, it did not reach Bear Creek during the period we
9 were working on it.

10 Q How would you assess the seriousness of this violation?
11 You heard the testimony of Mr. Lof, and you reviewed the
12 exhibits that have been placed in as evidence in this case.
13 What's your assessment of the seriousness.

14 A All right. My opinion is, No. 1, that this is not even
15 a violation. This is a circumstance of winter which occurs
16 with every property. And as to degradation of the environment,
17 none occurred. More coal dust blows into Bear Creek on a
18 breezy day than what was washed in as a result of that culvert.

19 Q How would you explain, Mr. Coonrod, the pictures that
20 were shown to you by Mr. Lof that shows ditches around the
21 fence, for instance, and a path of erosion underneath the
22 bale? Where did that water come from?

23 A Okay. During the time that this occurred and the time
24 when Mr. Lof made his inspection, we had had a warming trend.
25 The clear water ditches did flow water over a period of



Rec-5

1 several hours in one or two days. We had a melt. I don't
2 know if the Board observed in those pictures, but the road
3 and the grass and so on were bare of snow. At the time of
4 the OSM inspection we had 18 to 24 inches of snow on the
5 ground. That moisture had in fact melted.

6 Q That was predominantly clear water area, or the undis-
7 turbed area?

8 A That's correct.

9 Q Not the disturbed water area?

10 A Yes. During the winter months, coal dust is prevalent
11 in all ditches, and it blows into clear water as well as un-
12 disturbed--well, disturbed.

13 Q What about your negligence? Do you see any negligence
14 at all?

15 A In my opinion, and I still maintain today, I took the
16 only prudent course of action I could follow. Mr. Lof's
17 opinion, based on previous recommendations he's made to me
18 have been in error, and I felt at this time he was, likewise,
19 in error. I took the only course of action that I felt was
20 prudent to maximize the protection of the environment and
21 to rectify the problem.

22 Q And your testimony has been that in fact the problem
23 you had on the 25th was totally corrected by clearing out
24 the culvert before the inspection was even made; is that
25 correct?



1 A As far as--yes. Absolutely.

2 Q Then it had buildup again?

3 A It continues to build up during periods of freeze and
4 thaw.

5 MR. KINGSTON: No further questions.

6 CHAIRMAN WILLIAMS: Ms. Roberts.

7 CROSS-EXAMINATION BY MS. ROBERTS

8 Q Mr. Coonrod, you stated that this is a continual problem
9 with the icing up of this culvert?

10 A It's a continual problem with icing up of virtually
11 every culvert that flows water.

12 Q You also testified that you did clean this culvert out
13 and clear this culvert prior to the inspection of March 7?

14 A Yes. This culvert was clean.

15 Q And you have also testified that you have used heaters
16 to keep this culvert open subsequent to the issuance of the
17 violation at issue today?

18 A I believe that we have had heaters run--Barbara, I
19 didn't--I don't remember which day we installed them. Until
20 we could get the culvert open enough to get the heater to
21 blow into them, they were of no value. We would just heat
22 the outdoors. We had used the heaters to clear that culvert
23 prior to that inspection, yes. Whether they were being
24 utilized that day, I honestly don't remember.

25 Q But, yet, on that day of the inspection the culvert was



1 iced over again?

2 A No. That is not correct. The culvert was partially
3 obstructed with ice for a portion of its length, which could
4 have occurred within moments of the time Mr. Lof made his
5 observation.

6 Q Mr. Coonrod, you have stated several times that virtual-
7 ly everyone has this problem, that all other operators have
8 the same problem. Are you aware of any specific situations
9 at approximately the same elevation and some of the remedies
10 that are being used by other operators?

11 A Barbara, when this violation occurred, I discussed it
12 with one of the other operations which I am employed at.
13 At that time we took a tour of their property and observed
14 virtually the same problem at a number of sites. That other
15 operation, due to the nature of the situation, I would rather
16 not involve.

17 MS. ROBERTS: I have no further questions. May
18 I call Mr. Lof again?

19 CHAIRMAN WILLIAMS: Yes. Did you have any further
20 questions, Mr. Kingston?

21 MR. KINGSTON: No.

22 DAVID LOF

23 recalled as a witness on behalf of the respondent,
24 having been heretofore duly sworn, testified further
25 as follows:



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DIRECT EXAMINATION BY MS. ROBERTS

Q Mr. Lof, you have testified that you have been inspecting Co-Op Mine Bear Creek for approximately a year. Have you been assigned to any other areas, any other mines?

A Yes, I have.

Q Have you ever been assigned to Soldier Creek Mine?

A Yes, I have.

Q Are they approximately the same area and the same elevation as the Bear Creek mine?

A They are located northeast of Price. The same conditions exist. They are in a canyon area approximately the same elevation. They also get a large amount of snow during the winter.

Q What have you observed about the culverts that you were inspecting at the time that you were assigned to the Soldier Canyon Mine?

A On a regular basis, they would run water through their culverts and ditches to keep them clear of ice.

Q With regards to the sediment indicated in your picture at the straw bale, that is backed up behind the straw bale, in your opinion does that indicate significant disturbed water flow?

A The amount of sediment there could be contributed to by both the disturbed area and "clear water diversion runoff."

MS. ROBERTS: Thank you. I have no further questions.



1

CROSS-EXAMINATION BY MR. KINGSTON

2

Q Just one or two, if I may. Mr. Lof, Soldier Creek is located on a south aspect, rather than a north aspect, as far as the sun shining on the operation, isn't it?

3

4

5

A No, sir. They are located on--they face the east.

6

7

Q They face the east, but most of their operation is also facing to the south, where they get the sunshine; isn't that true?

8

9

A No, sir, I don't believe so.

10

MR. KINGSTON: No further questions.

11

CHAIRMAN WILLIAMS: Does the Board have any questions?

12

13

MR. McINTYRE: Yes. About how much water are we talking about in gallons? The size of that--

14

15

MR. COONROD: During the total period?

16

MR. McINTYRE: I'm kind of hard to--

17

MR. KINGSTON: I think the books are blocking your view.

18

19

MR. COONROD: Essentially a garden hose, under normal pressure, runs five gallons a minute.

20

21

MR. McINTYRE: Three to four to five?

22

MR. COONROD: That would give you a comparison. I would say we're talking of a stream probably the diameter of that pen. So if a garden hose is running five gallons, I would estimate that to be less than a gallon per minute.

23

24

25

RONALD F. HUBBARD

230 JUDGE BUILDING
SALT LAKE CITY, UTAH 84111

355-3611



36

THE RECORD NEVER FORGETS

where/why
↓
about/Don,

1 for a two to three hour period.

2 MR. McINTYRE: Over a period of three hours?

3 MR. COONROD: Yes, sir.

4 MR. McINTYRE: Thank you.

5 CHAIRMAN WILLIAMS: But you're saying that occurred

6 on March 25 or 26?

7 MR. KINGSTON: 26th.

8 MR. COONROD: Can I take a look at my notes?

9 MR. KINGSTON: The OSM people were out on the 26th.

10 MR. COONROD: We have a gentleman here.

11 CHAIRMAN WILLIAMS: I'm confused. The situation

12 existed on March 25 or 26. You said it was totally corrected--

13 I mean February. I'm sorry. Subsequently you said it was

14 corrected?

15 MR. COONROD: We had water flowing by that evening

16 back into the culvert.

17 CHAIRMAN WILLIAMS: And the inspection was on March

18 7?

19 MR. COONROD: Mr. Lof's inspection was March 7.

20 CHAIRMAN WILLIAMS: Was the violation issued for

21 the conditions that existed on March 7?

22 MR. LOF: That's correct.

23 CHAIRMAN WILLIAMS: And did water flow, water di-

24 verted on March 7?

25 MR. LOF: No, there was not.



1 MR. KINGSTON: The pictures illustrate that, Mr.
2 Chairman.
3 CHAIRMAN WILLIAMS: Thank you. Anything else?
4 MS. ROBERTS: Nothing further.
5 MR. LARSEN: I have one question. Maybe I'm a
6 little confused here. No water reached the creek?
7 MR. COONROD: No water--
8 MR. LARSEN: So as a result, there was no contami-
9 nants or anything from this flow going into the creek? Is
10 that correct?
11 MR. COONROD: Yes.
12 MS. ROBERTS: However, it was in the undisturbed
13 drainage, and any subsequent flow down the undisturbed
14 drainage would wash any sediment that was occurring there
15 into the creek.
16 MR. LARSEN: Did your flow actually reach the creek?
17 MR. COONROD: No.
18 MR. LARSEN: That was what I understood you to say.
19 The diversion never reached the--
20 MR. COONROD: Never even made it to the silt fence,
21 to be honest with you.
22 CHAIRMAN WILLIAMS: One side says yes, one side
23 says no.
24 MR. COONROD: It's a difference of opinion,
25 obviously. I happened to be there, though.



likely,
↓

1 MR. LOF: But my contention was that it could have,
2 because the color was black. It could have, once again, by-
3 passed the sediment pond and gone to the stream. I did not
4 know for sure whether or not the runoff at the time that Mr.
5 Atencio was on site had made it.
6 MS. ROBERTS: And that's the way it was assessed
7 in the civil penalty. It was assessed as likely, not as
8 having occurred.
9 CHAIRMAN WILLIAMS: All right.
10 MR. McINTYRE: One more. Maybe I'm thinking wrong.
11 Back to the discussions on gallons per minute, you say one
12 gallon per minute would be 60 gallons an hour. Right?
13 MR. COONROD: That's correct.
14 MR. McINTYRE: 60 gallons an hour for three hours,
15 you have 180 gallons. Let's just say roughly, 200 gallons
16 would about fill four oil drums full of water.
17 MR. COONROD: If it ran continuously at that rate,
18 yes, sir, that's correct.
19 MR. McINTYRE: We're only talking about 200 gallons
20 of water.
21 MR. COONROD: I think that would be a high figure,
22 to be honest with you.
23 MR. McINTYRE: It takes about ten gallons of water
24 to take a shower, doesn't it?
25 MR. COONROD: I use more than that.



C85-4-4-1
↓

1 MR. McINTYRE: You do? Thank you.

2 CHAIRMAN WILLIAMS: Go ahead.

3 MS. ROBERTS: I'd like to go on to the next
4 violation. This is N85-4-13-1. I would like to combine that
5 with a failure to abate Cessation Order C85-4-4-1. And
6 N-85-4-13-1, that violation was issued on April 23, 1985,
7 for failure to mine in accordance with an approved interim
8 permit.

9 In this particular instance, there was a pipe lead-
10 ing from the mine discharging water onto a sediment pond.
11 The State will prove that this water was discharging onto
12 a fill slope and, thus, wandering down through the mine site
13 into the sediment pond, which was not designed to contain
14 this additional water; that Co-Op did so knowing that it had
15 no approval to do so; that Co-Op failed to stop the discharge
16 immediately, as was directed by the NOV and had in fact not
17 abated the violation by April 30, 1985, when there was a
18 follow-up inspection.

19 DAVID LOF

20 recalled as a witness on behalf of the respondent,
21 having been heretofore duly sworn, testified further
22 as follows:

23 DIRECT EXAMINATION BY MS. ROBERTS

24 Q Mr. Lof, did you conduct an inspection of this mine on
25 April 19, 1985?



1 A Yes, I did.

2 Q Would you describe what you observed which caused you
3 to issue the Notice of Violation?

4 A I saw a pipe which was extending out of the slope. Water
5 was discharging at somewhere in the neighborhood of 25 gallons
6 per minute. I asked the operator if they had approval to
7 discharge the water.

8 He informed me that they did not. I saw the water go
9 into the sediment pond; and because they did not have
10 approval to discharge this additional waters to the sediment
11 pond, the violation in question was issued.

12 Q Mr. Lof, would you describe how the sediment ponds,
13 briefly describe, how sediment ponds are calculated for
14 structure design.

15 A Generally when an operator submits information for the
16 permitting and design of a sediment pond, they will submit
17 information as to what water is to go to a sediment pond,
18 so that pond can be properly sized. The operator is required
19 to insure the containment of a 10-year 24-hour event and in-
20 sure that a 25-year 24-hour event can safely pass through
21 the combination of spillways.

22 Q To your knowledge, was this additional water included
23 in the plans that were submitted to the Division?

24 A No, it was not.

25 Q Mr. Lof, would you describe the area which is the



1 subject of this NOV, using the slides that you have brought
2 with you?

3 A Yes.

4 (Lights off. Slide projector on.)

5 A Okay. This is a picture that was taken at the time of
6 my April 19, 1985, inspection. This is the pipe which I ob-
7 served discharging water. I was informed that that was water
8 from within the mine. This water was discharging onto this
9 conveyor belting, this black material here. It was then
10 flowing down off onto the slope below.

11 The discharge rate was estimated as approximately 25
12 gallons per minute.

13 (New slide.)

14 This is another picture of the same occurrence.

15 (New slide.)

16 This is a picture of the operator's mine site. The date
17 of my inspection, April 19, 1985. This is where the mine
18 water discharge pipe was located (indicating). You will
19 notice water, the wetness of the slope here. Water was com-
20 ing down the conveyor belting, down the rock face onto this
21 small pad at the Hiawatha level. The water was then crossing
22 the pad and going down this fill slope, and it was causing
23 erosion to the fill slope.

24 (New slide.)

25 This is another picture of the same general area, taken



1 the same day. You will note the erosion on the down slope.
2 This is a portal located on the Hiawatha seam pad. This
3 is a water line that simply runs--is running from somewhere
4 downslope on the portal at the time of my inspection. I do
5 now know what it was for.

6 (New slide.)

7 This is a picture taken near the location of the mine
8 water discharge pipe. This upper right-handed corner is the
9 level of the Hiawatha seam pad. This is the fill slope down
10 toward the crusher pad, which will be illustrated later.
11 This is the path which the runoff took to the sediment pond
12 (indicating).

13 This is looking from the crusher pad up towards the dis-
14 charge area. The discharge was occurring approximately here,
15 downslope, across the fill pad, down the fill. Down here
16 you can see the water that was coming down through the fill.
17 As best I can tell, the only source of this water was from
18 the mine water discharge.

19 (New slide.)

20 Again, we're back up near the mine water discharge point
21 looking down to the crusher pad. This is the runoff flowing
22 across the crusher pad, down to the coal stockpile pad. It
23 followed through across the coal stockpile pad to the culvert
24 which carried it down off of this pad to the shop pad area.
25 This is the shop here.



1 The water then comes along the road which accesses this
2 pad. You can see the water here. And then back through a
3 ditch to the sediment pond right here.

4 (Lights on. Projector off.)

5 Q Mr. Lof, were you or are you now aware of the source
6 of the water emanating from that pipe?

7 A Other than it being from within the mine, I do not know
8 what its origin is.

9 Q Was or is the quality of this water of concern to you
10 or was it of concern to you on the day you wrote the NOV?

11 A No, it was not.

12 Q Why is that?

13 A My only concern was the fact that it was going--it was
14 contributing additional waters to the sediment pond which
15 the sediment pond was not designed to handle. And I did not
16 know how much water could possibly be discharged from the
17 mine. There was 25 gallons per minute on the day of my in-
18 spection. It could have been more or less at any other time
19 for all I know.

20 Q In your opinion, was Co-Op aware that their existing
21 permit did not include the approval for this discharge of
22 water to the sediment pond?

23 A Yes.

24 MS. ROBERTS: I'd like to at this time introduce
25 Exhibits 6 and 7, which is the copy of the NOV that was



1 issued, No. 6. No. 7 is a copy of the inspector's statement.

2 Q (By Ms. Roberts) Have you documented your conversation
3 with regard to the discharge, your conversation with Mr.
4 Coonrod with regard to the discharge?

5 A Yes, I have.

6 Q Would you read that portion of your report?

7 A At the top of the page it reads: "April 19, 1985,
8 Inspection Memo." It says, page 2. In the third paragraph
9 two-thirds of the way down: "I asked Mr. Coonrod if they
10 had approval to discharge mine water to the sediment pond,
11 and he indicated that they did not. Therefore, because the
12 operator did not have approval to discharge mine water, and
13 the concern for the sediment pond's ability to handle
14 additional inflow, Notice of Violation N85-4-13-1 was issued."

15 Q So in your opinion, Mr. Coonrod knew that Co-Op was
16 discharging into the pond without approval?

17 A Yes.

18 Q What was the time set for abatement of this violation?

19 A Immediately. Well, there were two parts to the viola-
20 tion. Part A required the cessation of the discharge water
21 from the mine immediately. Part B required that the operator
22 submit complete plans to the Division for the permitting of
23 the discharge of water from the mine to the surface.

24 Q Was the violation, the discharge, immediately abated?

25 A No, it was not.



1 Q What was your response to that failure?
2 A I issued a Cessation Order for failure to abate the
3 Notice of Violation in question.
4 Q The number of that Cessation Order is C85-4-4-1?
5 A That is correct.
6 Q How was this violation ultimately abated?
7 A The operator simply took a plug and plugged up the pipe.
8 Q On what day was this violation abated?
9 A On May 3, 1985, according to a telephone conversation
10 between myself and Mr. Coonrod, at which time he informed
11 me that he had abated the violation. When I did a follow-up
12 inspection following that conversation, I found that the
13 operator had in fact plugged the pipe. So I terminated both
14 the Cessation Order and the Notice of Violation.
15 Q When was the Cessation Order issued?
16 A It was issued on May 2, 1985.
17 Q From the office?
18 A From the office. It was sent express mail to the
19 operator.
20 Q So they received it on May 3?
21 A That is correct.
22 Q And the violation was abated on May 3?
23 A Yes.
24 Q With regard to the civil penalty points that were
25 assessed for this violation, under the category of



1 seriousness and probability of occurrence, what is the
2 likelihood that the additional water entering the pond
3 actually topped the embankment?

4 A It's unlikely.

5 Q Looking at what has been marked Exhibits 8 and 9, the
6 proposed and finalized assessment, was this violation in fact
7 assessed as an unlikely occurrence?

8 A I believe so.

9 Yes. The violation was--the seriousness of the viola-
10 tion was assessed as unlikely. The actual probability of
11 occurrence, I should say, was assessed as unlikley.

12 CHAIRMAN WILLIAMS: Five?

13 THE WITNESS: Correct.

14 Q (By Ms. Roberts) The low end of unlikely. Mr. Lof,
15 if damage did occur, would it have extended outside the per-
16 mit area?

17 A Yes, it would have. And Bear Creek is in close proximity
18 to the sediment pond discharge.

19 Q Was this violation assessed at the low end of occurred?

20 A Yes, it was. It was assessed as 9 points on damage,
21 which is in accordance with the regulations which state that
22 when damage occurs outside, or damage could potentially ex-
23 tend outside the permit area, that points be assessed from
24 8 to 25 points.

25 Q This is actual damage or potential damage; is that



1 correct?

2 A That's correct.

3 Q Do you concur with this assessment officer's report for
4 the seriousness?

5 A Yes, I do.

6 Q With regard to negligence, in your opinion was Co-Op
7 aware that it had no approval to discharge water into the
8 sediment pond?

9 A Yes, they were.

10 Q In your opinion, then, Co-Op acted knowingly in this
11 matter?

12 A Yes.

13 Q Would you look again at the assessments, Exhibits 8 and
14 9 for the points that were assessed for negligence. There
15 were 9 points assessed as proposed, and 3 points assessed
16 on the finalized. Do you concur with this assessment?

17 A I concur with the proposed assessment, but not the
18 final assessment.

19 Q For what reason do you not concur?

20 A Because the operator was aware of--in their permit they
21 were responsible to mine in accordance with their permit.
22 Any time they do not, they are considered knowing and willful.

23 Q Mr. Lof, I would like to move now to Violation C85-4-4-1,
24 which is described as a Failure to Abate Cessation Order.
25 Would you explain what a Failure to Abate Cessation Order is.



1 A A failure to abate a Cessation Order is required by
2 Utah Code Annotated 40-10-22(1)(c) to be issued if the
3 operator does not comply with the Notice of Violation within
4 the time set for abatement.

5 Q Did you conduct an inspection on April 30, 1985?

6 A Yes, I did.

7 Q What did you observe?

8 A I found that the mine water was still discharging from
9 the mine water discharge pipe at a lower rate.

10 Q And your action was to issue--

11 A To issue a Cessation Order for failure to abate.

12 MS. ROBERTS: I would like to enter Exhibit No.
13 10, which is a copy of the Cessation Order, at this time.

14 Q (By Ms. Roberts) You previously testified that the date
15 of issuance of this Cessation Order was May 3, 1985.

16 A It's May. It was issued from our office on May 2, 1985;
17 received by the operator on May 3, 1985.

18 Q When was it abated?

19 A May 3.

20 MS. ROBERTS: That's all I have of this witness.

21 CHAIRMAN WILLIAMS: Mr. Kingston.

22 CROSS-EXAMINATION BY MR. KINGSTON

23 Q Mr. Lof, your testimony was that all of the discharge
24 did wind up in the sedimentation pond?

25 A I'm not--at the time that I was on the property, the



to went/wanted

1 water had not in fact reached the sediment pond. It was at
2 least--okay. Let me state this. When I came onto the pro-
3 perty to begin with, I noticed water being discharged from
4 the culvert which carries the water from the coal pad down
5 to the shop pad, at which time I thought, "There is a problem
6 somewhere."

7 So I ~~went~~ to find where the discharge--where the water
8 was coming from. I found that it was. So at that point in
9 time, no, it had not reached the sediment pond. I found later
10 the discharge was coming from the mine water pipe, which I
11 illustrated in the pictures. My pictures showed that the
12 water had continued on down and at least reached the ditch,
13 which would convey it to the sediment pond.

14 Q But it hadn't reached the pond?

15 A I cannot say for sure.

16 Q It hadn't gone off the permit area?

17 A No, it had not.

18 Q Hadn't even gone off the undisturbed area?

19 A No, it had not gone onto undisturbed.

20 Q You testified that the discharge was about 25 gallons
21 a minute. How did you measure that discharge?

22 A That is an ocular estimation. Generally when I make
23 an estimation like that, I confer with the operator to see
24 if they're in agreement with my estimation.

25 Q Did he agree with that estimation?



1 A Yes, he did.

2 Q I notice that you wrote in your report the amount of
3 water being discharged was approximately 15 to 25 gallons
4 per minute.

5 A Excuse me. I stand corrected. Yes. 15 to 25.

6 Q Can we take a look at some of those pictures again?

7 A Yes.

8 (Lights off. Projector on.)

9 Q I believe you have two pictures showing the discharge.
10 It's your testimony that the water we see coming from this
11 picture and the next one, that would be 25 gallons per minute,
12 or even 15 gallons per minute?

13 A Yes, sir.

14 Q Can we see the next one?

15 I guess if you want to make an ocular observation, it
16 appears to me there is not enough force there to even create
17 a stream. It's just running around the edge of the pipe.
18 Am I seeing it wrong, or is that the case?

19 A Due to photography and the speed which I was shooting
20 the film at, water will be stopped in action. So you cannot
21 tell accurately from a picture when you have a flow such as
22 this, exactly how much water is flowing, is being discharged.

23 Q Your ocular estimate is accurate?

24 A I felt so, yes.

25 Q All right. Let's go to the next slide.



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(New slide.)

Q On one or two of these you pointed out some erosion.
Is there any erosion on that picture there that you can show me?

A There is so--so much occurred in here.

Q And it's your testimony that the discharge of this water caused that erosion?

A Yes. That's not particularly evident or pertinent to the violation. The violation was not issued on the erosion.

Q What was the violation issued for? Just unauthorized discharge?

A It was issued for failure to mine in accordance with the permit. In other words, you had water going to the sediment pond which was not designed to go to the pond.

Q How do they determine the size of the pond? What is it designed to carry?

A I would say that the pond is more than likely designed to carry simply the disturbed area runoff, such as from precipitation events, snow melt, which is on the disturbed area on the property.

Q Have you ever heard the figures in regard to this particular pond, 30 percent over maximum capacity for a 10-year maximum event?

A I don't believe so.

Q You haven't heard that? Is it your testimony or your



1 belief that the sedimentation pond as constructed would not
2 handle that amount of water in addition to what is in the
3 permit?

4 A Will you restate that, please?

5 Q It's your testimony that with the addition of this water,
6 if it be 15 gallons or 15 to 25 gallons per minute, that that
7 would overburden the capacity of the sedimentation pond?

8 A Potentially. If discharge continued, and, say, if that
9 discharge varied.

10 Q Did you have any conversation with Mr. Coonrod or anyone
11 else at Co-Op Mine to determine whether or not that was a
12 constant flow?

13 A I had seen it during--I had seen the same pipe during
14 previous inspections, at which time I had seen only a trickle
15 from the pipe, and I had not considered it a concern at that
16 time, because the water did not go any place. However, with
17 the amount of water which was being discharged, and not know-
18 ing the exact source of the water, I had concern.

19 Q So you've seen it before, but hadn't issued a violation?

20 A Because the amount of water being discharged was less
21 than one gallon per minute. It was not going anywhere. It
22 was simply going into the fill. It was in no way--had no
23 opportunity to reach the sediment pond in my estimation.

24 Q So here it was a matter of the volume of water, rather
25 than the fact that it was coming out of the pipe?



1 A Yes, sir.

2 Q Let's go to the next picture.

3 (New slide.)

4 The next one.

5 (New slide.)

6 Is there any other water that comes down that slope that
7 could cause a completely bad erosion other than the water
8 that you cited as far as in this particular violation? For
9 instance, when it rains, do you get some runoff in that area?

10 A You're concerned with the erosion?

11 Q Yes.

12 A I suppose, yes. Precipitation could cause some erosion,
13 depending upon volumes.

14 Q Let's go to the next one.

15 (New slide.)

16 The water you see at the bottom, that's not the same
17 water that comes out of the top at the discharge, is it?

18 A Well, it has been--collected some sediments, apparently.
19 But I felt that that was approximately the same volume which
20 was discharging.

21 Q Did you follow the stream to see if what came out at
22 the top ended up down here?

23 A Could you repeat that, please?

24 Q You have the picture that shows water at the bottom here?

25 A Yes.



1 Q My question is, is the water at the bottom the same water
2 that comes out of the discharge that you issued the violation
3 for, or does that come from other sources or some other spot?

4 A I do not feel that there was another source of that water
5 at that time.

6 Q Can you show me where it comes down, then, or did you
7 follow it, or do you know? I don't see any water up at the
8 top that comes down to that point. Is it because of the angle
9 of the picture?

10 A I think it could be partially due to the picture. You
11 can see here--you don't see any water right here. You don't
12 see water here. This is very porous material; and so some of
13 the water can enter into that fill, and it happens to surface
14 at certain points. You can't always follow it all the way
15 down the slope. It may enter as fill at some point in time.
16 I did see water going across the Hiawatha seam pad and going
17 down off the slope.

18 Q Your inspection was the 19th; is that correct?

19 A That is correct.

20 Q The violation wasn't written and sent down until the 23rd.
21 Why was that?

22 A Because I wanted to go back and look at the records and
23 the permit within the Division offices to make sure whether or
24 not the operator had approval to discharge water from the mine
25 and, if they had approval, to send additional waters to the
sediment pond.



↓ remember what day he said he would be leaving.

1 Q Did you have a conversation with Mr. Coonrod about
2 possibly correcting that situation on site at that time?

3 A Yes, I did. In fact, Mr. Coonrod said that there would
4 be no problem, that he would simply get a plug and plug the
5 mine water. I was surprised when I came back on I believe
6 it was May 30 and found the mine water still discharging.
7 I was very surprised.

8 Q When Mr. Coonrod offered to do that, what did you tell
9 him? How did you respond?

10 A "Fine."

11 Q You didn't tell him to wait until you got back to your
12 office, and then you would let him know?

13 A I do not remember.

14 Q Do you remember Mr. Coonrod saying, "If there is a pro-
15 blem, let me know now, because I'm going to leave town"?

16 A All I remember is Mr. Coonrod indicated that he was going
17 to plug the pipe.

18 Q He was going to what?

19 A That he was going to plug the mine water discharge pipe.

20 Q You don't remember him telling you he was going to leave
21 town?

22 A I do remember he was going to leave town, yes.

23 Q He told you he was going to leave the next day?

24 A I do not remember what day he said he would be leaving.

25 Q Do you remember him asking you to please let him know

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1 immediately if there was a problem?

2 A Yes. And I believe that I informed him that I needed
3 to go back to the offices and make sure.

4 Q Did you tell him you would let him know immediately after
5 you got to your office?

6 A I do not recall.

7 MR. KINGSTON: No further questions.

8 (Lights on. Projector off.)

9 CHAIRMAN WILLIAMS: Thank you. Do you have further
10 questions of the witness?

11 MS. ROBERTS: Yes.

12 REDIRECT EXAMINATION BY MS. ROBERTS

13 Q Mr. Lof, would you describe the weather conditions at
14 the time of your inspection? Was it a dry day?

15 A Yes, it was dry, and there was--it was past the snow
16 melt season. There was no snow on the mountain. In fact,
17 I believe my pictures would show that.

18 MS. ROBERTS: That's all I have.

19 CHAIRMAN WILLIAMS: Mr. Kingston.

20 RECROSS-EXAMINATION BY MR. KINGSTON

21 Q Mr. Lof, who did you mail the Notice of Violation to?

22 A I mailed the violation to Co-Op Mining Company at P.O.
23 Box 1245, Huntington, Utah. Zip Code 84528.

24 Q And addressed to Mel Coonrod, was it not, Co-Op Mining
25 Company?



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A I believe that it would have been addressed to Mr.
Coonrod, yes, sir.

MR. KINGSTON: No further questions.

CHAIRMAN WILLIAMS: All right. We will recess until
1:30.

(Noon recess from 12:10 p.m. until 1:30 p.m.)

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1 SALT LAKE CITY, UTAH, THURSDAY, OCTOBER 24, 1985, 1:30 P.M.

2 MR. CARTER: If we could come to order. Mr.
3 Williams is tied up with a phone call. So I'll conduct the
4 hearing in his absence. If I may, I'll ask counsel to re-
5 fresh all our memories as to who had just finished testifying
6 and whether or not there was any recross or redirect.

7 MR. KINGSTON: My understanding is that the State
8 had completed its examination of Notice of Violation No.
9 N85-4-13-1 and the accompanying C.O. relative to that viola-
10 tion; and we were about to proceed and call our witnesses.

11 MR. CARTER: Is that correct?

12 MS. ROBERTS: Right.

13 MR. CARTER: Mr. Kingston, will you proceed.

14 MR. KINGSTON: Mr. Coonrod to the stand.

15 MELVIN COONROD

16 recalled as a witness on behalf of the petitioner,
17 having been heretofore duly sworn, testified further
18 as follows:

19 DIRECT EXAMINATION BY MR. KINGSTON

20 Q Mr. Coonrod, did you accompany Mr. Lof on the inspection
21 of April 19, 1985?

22 A Yes.

23 Q This was the NOV written in relation to a discharge of
24 water from a pipe? Do you recall the circumstances of that
25 violation or the issuance of that alleged violation?



1 A Not on April 19. There was not an NOV issued at that
2 date.

3 Q What occurred on April 19?

4 A I accompanied Mr. Lof. We inspected the larger portion
5 of Bear Creek property. The 2-inch pipe was observed. My
6 recollection of that conversation was to the effect of "Do
7 you know the status or what the--where this water is coming
8 from?"

9 At that time I honestly did not know. It appeared to
10 be coming from the mine. Mr. Lof asked me if we had a permit
11 to discharge the water into the sediment pond. I said I was
12 confident we had an NPDES program relative to mine discharge.
13 I did not know what the status of the water was going to the
14 sediment pond.

15 I asked him if it was a problem. He said that he did
16 not know. He needed to research the situation. I said, you
17 know: "If it's a problem, I can put a plug in it. It's a
18 simple matter of putting a 2-inch threaded male plug into
19 the elbow."

20 It was my understanding at that time that it was not
21 an NOV, or at least it was not definitely an NOV and may have
22 been suspect; that no action was warranted on my part at that
23 time.

24 I explained to Mr. Lof, I believe at that same setting,
25 that if there was a problem, I needed to know, so that I could



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1 take action. I was going to be in Arizona for several days.
2 I wanted to correct the situation prior to my leaving.

3 He said he would return to the office, he would research
4 it and notify me as to the disposition. We proceeded and
5 inspected the rest of the property. As I remember, there
6 were no NOV's issued during the course of the inspection.

7 Q When you mentioned to Mr. Lof that you could correct
8 the situation if it was warranted, or if there appeared to
9 be a violation, how specifically did he respond to you?

10 A That he needed time to research the situation.

11 Q Did he tell you to do something or not to do something?

12 A I remember the plug was mentioned, and I believe that
13 it was decided that it would not be done until I heard back
14 from him, and no action was to be taken.

15 Q When next did you hear back from Mr. Lof or anyone else
16 from the Division regarding this condition?

17 A Okay. I was--I left I believe on the 23rd of April in
18 the p.m. I was accompanied by Mr. Dalton of the Utah Division
19 of Wildlife Resources. We were gone until late the night
20 of May 2. When I arrived back on the morning of May 3, I
21 found two letters addressed to me from the Division of Oil,
22 Gas, and Mining. One of them was the issuance of the NOV
23 in question. The other letter was the C.O. or Cessation
24 Order relative to this NOV.

25 We immediately corrected the situation, which involved



1 going down to the warehouse, getting a 2-inch plug, walking
2 up and screwing--or, driving up and screwing it on the pipe,
3 at which time I called Mr. Lof, which I think was about 8:15
4 in the morning, and explained my concern relative to a C.O.
5 issued on NOV, which I had not received prior to--in other
6 words, receiving both notices in the same day's mail.

7 Q Did you receive any word at all from Mr. Lof of the
8 Division either by phone call, by letter, or in person between
9 the dates of April 19, 1985, and April 23, 1985, the day you
10 left the state?

11 A No, I did not.

12 Q You testified that at the time of the inspection you
13 weren't aware of the origination of that water. Have you
14 since learned the source of that water?

15 A Yes.

16 Q Where did it come from?

17 A The water originates in the old works of what was at
18 one time the Bear Canyon Mine. It's approximately 240 feet
19 underground. It's in a section which has been sealed off
20 from the existing mine. The purpose of the water being piped
21 is the outside dust control, the culinary system when it's
22 activated, and long water, et cetera.

23 The pipe proceeds underground from a sump in the old
24 works, which is permanently sealed off to an 8,000-gallon,
25 I believe, water tank, at which point the water tank is so



1 vented so that if it overflows, the overflow would come out
2 of that 2-inch pipe.

3 At the time of the inspection, they were in the process
4 of working over the water system. The pipe--the rubber hose
5 that you saw exiting the Hiawatha seam was in fact a temporary
6 bypass, so that they could run the surface dust control.
7 While they were overhauling the surface water system, the
8 valve was open to allow the tank to overflow.

9 Q So what you're telling me essentially, then, is then
10 that this is not mine water, not used in any active work in-
11 spections in the mine or the mining activity underground at
12 the Co-Op?

13 A That's absolutely correct. In fact, the Department of
14 Health subsequently--since that time we have been working
15 with a Mr. Dave Ariotti from the Department of Health. We
16 have monitored that flow. It has been consistently less than
17 five gallons per minute. And the Department of Health is
18 considering classifying that source of water as a deep well,
19 due to its distance underground and the fact that it is
20 totally inaccessible to any type of mining activity.

21 Q In fact, Co-Op Mining Company does have water rights
22 to use or to divert water at that source or that point; is
23 that correct?

24 A That's correct. We have the right to divert the water
25 and utilize that water for mining and/or irrigation, and we



1 have subsequently filed on the additional right to use that
2 water for culinary purposes.

3 Q You mentioned that you have tested the water; at least,
4 that you have tested the flow, and it has been consistently
5 less than five gallons per minute. Did you ever at any time
6 agree with Mr. Lof that the flow from that source was 15 to
7 25 gallons per minute?

8 A Carl, at the time, that was such an insignificant issue--
9 I'm--Mr. Lof may have said, "What do you think is there, 15
10 or 20 gallons?" And I may have said, "Sure, if you say so,
11 Dave." I honestly don't remember concurring, but I don't
12 remember disputing that. In my opinion, looking at the slides,
13 and what I've seen since that time, I have never seen that
14 quantity. There didn't appear to me to be--it is more in
15 line with what we've measured in cooperation with the
16 Department of Health, less than five gallons per minute.

17 Q Do you have a constant discharge from that source of
18 up to five gallons or even more? Or what's the nature of
19 the discharge of the overflow at that point?

20 A I concur with Mr. Lof. He's inspected us now for upwards
21 of a year; and to my knowledge that was the only time where
22 we had any significant discharge. Of course, since that time
23 we've had none. It's been sealed. But prior to then, I can
24 never remember it discharging, with the exception of when
25 we turned off the dust control system to do repair work.



1 Q So it's not a steady source of water that will eventually
2 reach into the sedimentation pond, if it got that far?

3 A No, it is not a perpetual discharge, no.

4 Q On the date of the inspection, were you able to deter-
5 mine if in fact the discharge was getting into the sedimenta-
6 tion pond?

7 A To my knowledge, I have to concur with Dave. I accompan-
8 ied him--I don't know that for a fact it was a fact the pond
9 was--the reason we do that type of work in the spring, we
10 do it after the snow has run off, and it's prior to our normal
11 thunderstorm season, which is late summer. And at that point,
12 our pond is at its lowest point. Now, as Dave pointed out,
13 the water level in the pond was, I believe he stated, three
14 inches below the decant device. Are the Board members
15 familiar with how a sediment pond is designed, with an over-
16 flow and a decant? So three inches below the decant means
17 then that we could not drain the pond at that point. All
18 of our capacity was above that--up to the emergency spillway.
19 So it had it's full 24-hour 10-year event capacity, in
20 addition to another three inches.

21 So the likelihood--or, the--it is a good time of year
22 for us to do work, where water has to be diverted into the
23 sediment pond. Once that water--we have tested the water.
24 It's superior quality. It's excellent drinking water. Once
25 it runs across the surface, it becomes disturbed runoff.



1 Q Is there any chance that that water could go any place
2 outside of the disturbed area, either before or after reaching
3 the sedimentation pond, or where does it go?
4 A That water now is used for dust control.
5 Q In this case, where it overflowed at that point?
6 A No, no. We--it was--contained and directed into--would
7 have made it into the sediment pond.
8 Q If there were enough flow?
9 A That's correct.
10 Q How would you assess the damage, either probability or
11 actual damage that would have or did in fact occur from this
12 alleged violation?
13 A I feel that no damage occurred whatsoever.
14 Q So approximately--
15 A Again--
16 Q Go ahead.
17 A As we pointed out with the last NOV, you have to--to
18 take whatever measures are necessary to repair a waterline,
19 you can't have water flowing in the line. You've got to dis-
20 connect the waterline. I don't--what do you do with the water?
21 Do you sit there with a bucket, flush it down the toilet?
22 I feel the course of action we took was prudent under the
23 circumstances.
24 Q What about the seriousness of the alleged violation?
25 A I think that's a moot question. There was--there was



1 in my mind no violation and no seriousness relevant.

2 Q Do you feel there was any negligence in either allowing
3 the condition to occur or not abating the violation?

4 A I feel there was negligence on Dave's part. I made
5 it very clear to him that if there was a problem there, that
6 I needed to be notified prior to leaving the site, so that
7 I could rectify it. And I was given--he was given the dates
8 and the time that I would have to leave, and I asked him
9 specifically to get back to me as to what course of action
10 he wanted me to follow. And in my opinion, Carl, I feel
11 it was a deliberate attempt to create a C.O. based on a
12 supposed NOV.

13 Q You were in fact at the site four days after Mr. Lof
14 left, and you received no word that any corrective action
15 was needed?

16 A That's correct. I was not present at the site the en-
17 tire time, but I have several numbers which Mr. Lof has where
18 I can be reached if I'm not at the property. And no effort
19 was made to contact me.

20 Q In fact, the NOV was mailed down to you the day you
21 told Mr. Lof you would be leaving?

22 A It was apparently--based on Mr. Lof, it was sent that
23 day. It was not received by me that day.

24 Q That was addressed to you?

25 A Addressed to me in care of Co-Op, yes.

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1 Q You got it when you returned?

2 A That's correct.

3 MR. KINGSTON: No further questions.

4 CHAIRMAN WILLIAMS: Ms. Roberts.

5 CROSS-EXAMINATION BY MS. ROBERTS

6 Q Mr. Coonrod, you are in charge of compliance and permit-
7 ting for the Co-Op Mine; is that correct?

8 A That is correct.

9 Q There are times when you need to be away from the mine
10 site; is that also correct?

11 A Yes.

12 Q When you are absent from the mine site, is there someone
13 else who takes care of the compliance duties required by
14 the mine?

15 A Yes.

16 Q Would you have instructed that person to receive any
17 mail from the Division of Oil, Gas, and Mining that would
18 be in your name as registered agent with the Division?

19 A Up until that time, the circumstances had not occurred;
20 and I had not instructed anyone to open the mail addressed
21 to me. Since then, we have, yes, Barbara, to answer your
22 question.

23 Q Have you instructed the Division that you are the person
24 to receive correspondence relating to compliance and permitting?

25 A That is correct. I've also given them two addresses



1 to in the future mail information to.

2 Q On the date of the inspection, on April 19, '85, was

3 the pipe at issue discharging water?

4 A An issue relative to a NOV or--

5 Q Was the pipe that we're talking about, the discharge

6 pipe, was it discharging water at the time?

7 A Yes, it was.

8 Q Was the water flowing down the fill slope across the

9 pad and into the collection system?

10 A Yes, it was.

11 Q Was the quality of the water ever discussed in relation

12 to the--

13 A I mentioned to Mr. Lof that we had tested the water

14 and it was of excellent quality.

15 Q Would the quality of the water be at issue if it was

16 going into the sediment pond, as opposed to the quantity

17 of water?

18 A The quality would be an issue at the point that it were

19 to leave the permit area. If it wasn't up to a certain

20 quality, it would need to go to the sediment pond. I don't

21 quite understand--

22 Q I'm sorry. I'll rephrase the question.

23 A Okay.

24 Q In fact, I'll drop the question. Isn't it true that

25 the regulations relating to sediment ponds and the statute



1 relating to sediment ponds are designed to protect the environ-
2 ment against water pollution?

3 A That's correct.

4 Q Isn't it also true that the capacity, the designed
5 capacity of the sedimentation ponds are so designed to contain
6 a runoff event on a calculated area of runoff, disturbed
7 areas; isn't that correct?

8 A Yes. That is correct.

9 Q If there were other sources other than the calculated
10 disturbed area, isn't it possible that the combined sources
11 would cause the sedimentation pond to overflow?

12 A Most ponds--well, all ponds of Co-Op are oversized.
13 In other words, we built them larger than the calculations
14 to anticipate incidental inflow to sediment ponds. But your
15 assumption, the minimum size, yes, is calculated on the maxi-
16 mum 10-hour 20--well, 10-year 24-hour event.

17 Q That's correct. And if the 10-year 24-hour event took
18 place along with other sources, and the pond overflowed,
19 where would that water go?

20 A Okay. The emergency spillway at Pond A at the Bear
21 Canyon Mine goes into an existing drainage and intersects
22 Bear Creek probably, I would say, 150 to 200 yards down
23 channel from the pond. Dave, correct me if I'm in error
24 there. That is an approximation.

25 MS. ROBERTS: That's all I have.



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MR. KINGSTON: No further questions.

MS. ROBERTS: I would like to recall Dave for a minute.

CHAIRMAN WILLIAMS: Very well.

DAVID LOF

recalled as a witness on behalf of the respondent, having been heretofore duly sworn, testified further as follows:

DIRECT EXAMINATION BY MS. ROBERTS

Q Mr. Lof, do you recall--let me rephrase that. Is it standard practice to issue violations from the office, standard practice for you and the other inspectors to issue violations from the office upon returning from an inspection?

A Yes.

MS. ROBERTS: That's all.

MR. KINGSTON: No cross.

CHAIRMAN WILLIAMS: Very well. Is there anything further on this violation, this NOV? All right. One more to go.

MS. ROBERTS: Mr. Chairman, Mr. Lof is involved in some training up in Park City. The next violation, I will be calling another inspector. Is it all right if we let Dave go back to his training?

MR. KINGSTON: No objection.

CHAIRMAN WILLIAMS: Very well.



(further

↓ I will be calling

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(Discussion off the record.)

MS. ROBERTS: I can make a few opening statements.

CHAIRMAN WILLIAMS: Let's have the witness sworn.

(Ken Wyatt was duly sworn to testify.)

MS. ROBERTS: Mr. Chairman, this is a violation, a Cessation Order violation No. 84-7-1-1. It was issued on April--or, excuse me--August 6, 1984, for conducting mining operations outside of the permit area.

The actual facts of the violation, I believe that we have an agreement on that, that they have no--they will not contest the fact that they have operated outside of their permit area. Is that correct?

MR. KINGSTON: That's correct. We feel like Mr. Wyatt was acting certainly appropriately in writing a violation. We question only the amount of the penalty.

MS. ROBERTS: So, therefore, Mr. Chairman, I would like to move right on into the civil penalty, if I may.

CHAIRMAN WILLIAMS: You're going to have to describe the violation briefly.

MS. ROBERTS: All right.

KEN WYATT

called as a witness on behalf of the respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. ROBERTS

Q Mr. Wyatt, would you describe this violation, please?



1 CHAIRMAN WILLIAMS: Would you state your name,
2 please?

3 Q (By Ms. Roberts) State your name and your business
4 address for the record, please.

5 A Ken Wyatt. I work for the State of Utah, Department
6 of Natural Resources, Division of Oil, Gas, and Mining.

7 Q Were you an inspector for the Bear Creek Mine, or were
8 you an inspector at the time that this violation was issued?

9 A Yes.

10 Q Would you describe the violation for the Board?

11 A Okay. An inspection on July 9, 1984. At that time
12 I requested a permit area map from the operator; and upon
13 returning to the office and attending the July Board hearings,
14 it was revealed that the operator had mined outside of the
15 lease area and the permit area. And, therefore, the Cessation
16 Order was issued.

17 MS. ROBERTS: All right. I'd like to introduce
18 a copy of the Cessation Order as Exhibit 10; and, Exhibit
19 11 and 12, the proposed--I beg your pardon--I believe that
20 I've already asked for Exhibit 10 to be introduced.

21 And 11 and 12, on the past violations that we've
22 already covered on 85-4-4-1, I would like to have those intro-
23 duced. I'm sorry. I missed out on those. That would be
24 11 and 12 and 13. 13 is the Cessation Order, a copy of the
25 Cessation Order 84-7-1-1. And Exhibits 14 and 15 are the



1 proposed and finalized assessments for that violation. I
2 would like to have those--

3 CHAIRMAN WILLIAMS: That's 14 and 15?

4 MS. ROBERTS: Right.

5 CHAIRMAN WILLIAMS: What is 11?

6 MS. ROBERTS: 11 is the proposed assessment for
7 the Cessation Orders 85-4-4-1; and 12 is the finalized assess-
8 ment for 85-4-4-1.

9 CHAIRMAN WILLIAMS: Mr. Kingston, do you have any
10 objections to Exhibits 6, 7, 8, 9, 10, 11, and 12?

11 MR. KINGSTON: No, no objection.

12 CHAIRMAN WILLIAMS: We will receive those exhibits.

13 (Exhibits 6, 7, 8, 9, 10, 11,
14 and 12 were received in evidence.)

15 Q (By Ms. Roberts) With regard to the seriousness of
16 this violation, Mr. Wyatt, the proposed and finalized assess-
17 ments, on seriousness 15 points were assessed, which is the
18 low point of actually having occurred. Do you agree with
19 this assessment officer's report?

20 A Yes.

21 Q What is the probability that there was damage to the
22 property as a result of mining outside the permit area?

23 A Well, the coal was removed from the area, and the pillars
24 were pulled. So you do have a potential for subsidence and
25 possible impact on the ground water.



1 Q With regard to the damage, did the damage occur offsite?

2 A Yes, it would have.

3 Q 23 points were assessed for mining outside the permit
4 area, for the damage to the area. Do you concur with that
5 assessment officer's report?

6 A Yes.

7 Q With regard to the finalized assessment, assessment
8 conference officer Lundberg dropped the points from 23 to
9 18 for the extent of damage as a result of evidence that
10 there was less subsidence than had been anticipated. Do
11 you concur with that result?

12 A Yes.

13 Q With regard to negligence, in your opinion did Co-Op
14 know that they were operating outside of their permit area?

15 A The operator was in control of all of their maps and
16 surveys, and they should have known where they were at.

17 Q 30 points were assessed for knowing conduct, which is
18 the most number of points that can be assessed for greater
19 degree of fault. Do you concur with that assessment?

20 A Yes.

21 MS. ROBERTS: No further questions.

22 CROSS-EXAMINATION BY MR. KINGSTON

23 Q Mr. Wyatt, you've testified that this was outside of
24 the lease area, as well as outside the permit area. You're
25 certain about where the lease boundaries were for Co-Op?



1 A Okay. I may have made a mistake on that one. The first
2 time, the lease area, I believe, was COP Development. And
3 it was outside the permit area, though. I beg your pardon
4 for that.

5 Q All right. In fact, there had been some confusion or
6 discrepancy between certain maps that had been submitted
7 by Co-Op regarding boundaries; is that your recollection?

8 A Yes.

9 Q And there had been earlier maps that had included that
10 area, but then they subsequently submitted this last map
11 that you requested, and that did not include that area.
12 Is that your recollection?

13 A I don't know. I can't answer that one without pulling
14 the maps out.

15 Q You testified that damage did occur because the coal
16 was removed and the pillars had been pulled. Was that done
17 in any different manner from the rest of the mining operation
18 of Co-Op?

19 A I would think not, but I haven't been underground in
20 that area.

21 Q Who was damaged, then?

22 A Who was damaged?

23 Q Yes.

24 A Potentially the land, and should there be a ground water
25 regime in that area, that's got a potential damage also.



1 Q As far as the land, who would suffer the loss, or who
2 would sustain the damage because of the coal being mined?
3 A The landowner, I imagine.
4 Q Well, in this case it was Co-Op, is that correct?
5 A I believe it's COP Development.
6 Q But under lease to Co-Op?
7 A Okay.
8 Q Is there anything or any way they could have mined
9 differently to have decreased the potential for damage either
10 because damage to the land itself--or which might be caused
11 by subsidence of the area?
12 A Will you say that one more time?
13 Q Is there anything that Co-Op could have done differently
14 to minimize the amount of damage that might be subject to
15 the land or as a result of subsidence?
16 A They may have left the pillars in; but, you know, it's
17 just the way mining is. When you retreat, you pull the
18 pillars.
19 Q When you go in and mine, doesn't the BLM require you
20 to recover as much of the coal as you can?
21 A Yes.
22 Q When you made the inspection, Mr. Wyatt, did you check
23 to see if there had been any subsidence?
24 A No. At the time when I picked up the map, you know,
25 we did not know that mining had occurred off the permit area.



1 So we did not go and look at the area prone to subsidence.

2 Q How did you determine the amount or extent of the damage
3 if you didn't visually inspect the site?

4 A I believe the assessment conference officer assessed
5 it at the low end of the probability of occurrence.

6 Q Isn't it true that if the map that had been submitted
7 had included this area that there would have been no violation?
8 There would have been a finding of no damage and no probability
9 of an occurrence?

10 A Probably.

11 Q So the violation itself was written because that area
12 was not included in the permit area?

13 A Yes.

14 Q Is there anything else other than the boundary being
15 in the wrong place that would lead you to assess either a
16 high probability or a seriousness factor to this violation?

17 A No.

18 Q You did file an inspector's statement on this particular
19 violation, did you not?

20 A Yes, I did.

21 Q In that statement did you state, "However, all evidence
22 to date indicates that no offsite damage has occurred"?

23 A Where are you seeing that?

24 Q This is page 1 of the event, violations inspector's
25 statement, down under paragraph No. 2 of (a), the last line.



1 CHAIRMAN WILLIAMS: Excuse me. Is this one of
2 the exhibits?

3 MS. ROBERTS: It's in the Board book, but it is
4 not an exhibit that I have entered.

5 MR. KINGSTON: I thought that she was going to intro-
6 duce the whole package. I would ask that that exhibit be
7 given a number and offered as evidence in this case.

8 CHAIRMAN WILLIAMS: And the exhibit is--

9 MS. ROBERTS: It would be 16. It is the inspector's
10 statement in C84-7-1-1.

✓
11 MR. CARTER: Events violation and inspector's state-
12 ment?

13 MS. ROBERTS: That's correct.

14 CHAIRMAN WILLIAMS: That would be 16?

15 MS. ROBERTS: That's correct.

16 CHAIRMAN WILLIAMS: Do you have any objection to
17 that?

18 MS. ROBERTS: I have no objection.

→
19 Q (By Mr. Kingston) Mr. Wyatt, you went on to state in
20 that same paragraph as carried on to the other page: "Impacts
21 to the ground water regime should be nonexistent or minimal,
22 since the area mined is located away from the fault in the
23 area which acts as ground water conduits." Is that correct?

24 A I believe so. And that's probably why it was assessed
25 at the low end of probability of occurrence.



1 Q You assessed or agreed with the assessment of the negli-
2 gence of the 30 factor because in your opinion the operator
3 ought to know where his boundaries are?

4 A Yes. The operator should know where his boundaries are
5 and where he actually is underground.

6 MR. KINGSTON: No further questions.

7 CHAIRMAN WILLIAMS: Ms. Roberts.

8 MS. ROBERTS: I have nothing further.

9 CHAIRMAN WILLIAMS: Does the Board have any questions
10 of this witness?

11 MR. LARSEN: No.

12 CHAIRMAN WILLIAMS: Very well. Any further witnesses?

13 MS. ROBERTS: Nothing further. I have the closing
14 statement. That's all.

15 MR. KINGSTON: I have some witnesses. Mr. Coonrod.

16 MELVIN COONROD

17 recalled as a witness on behalf of the petitioner,
18 having been heretofore duly sworn, testified further
19 as follows:

20 DIRECT EXAMINATION BY MR. KINGSTON

21 Q Mr. Coonrod, are you familiar with the monitoring program
22 Co-Op has instituted for the detection of any subsidence or
23 other effects to the surface area of Co-Op's mining operation?

24 A Yes, I am.

25 Q In fact, are you the person responsible to see that that



1 program is implemented?

2 A Yes.

3 Q In regard to the area covered by the section of Co-Op's
4 mining which allegedly was outside of its permit area, what
5 effect would the mining activity of Co-Op in that area, even
6 presuming it is outside of the permit area, have on the sur-
7 face at Bear Creek Canyon?

8 A Just the--let's see. The last two springs we have--I'm
9 sorry. For the last three years we have conducted a subsi-
10 dence inventory. Up until this spring we conducted a
11 helicopter survey of the area which could be impacted by
12 subsidence.

13 On one of those occasions, the Division of Oil, Gas, and
14 Mining personnel accompanied us. That area was examined.
15 In fact, the area for a half a mile all the way around the
16 permit area was examined, as well as the permit area. And
17 there was virtually no evidence of subsidence observed by my-
18 self or the Division personnel in that particular locality.

19 MR. KINGSTON: Did the Division receive a map marked
20 as an Exhibit yet? Ms. Roberts, did you offer those as
21 evidence?

22 MS. ROBERTS: No. I wasn't going to. Go ahead.

23 MR. KINGSTON: Let's have those marked. There are
24 two maps attached to this package. That would be what?
25 Exhibits 17 and 18? I think it will help the members of the



1 Board to better understand what we're talking about here. One
2 of the maps is marked Figure 3-4, and the other is the one
3 just immediately behind that in your package. I would offer
4 those at this time as evidence.

5 CHAIRMAN WILLIAMS: Yes.

6 Q (By Mr. Kingston) Mr. Coonrod, did your monitoring pro-
7 gram for subsidence include that area which is marked on both
8 maps as an incidental boundary change?

9 A Yes, it did.

10 Q Would that have been monitored whether or not that area
11 were included in the permit area?

12 A Yes.

13 Q Are there any surface structures in that area?

14 A No. The area is extremely rocky. It's high walls. We
15 fly that area to--for subsidence, and also we do a drafters
16 survey, where that area is looked at for the presence of hawks,
17 eagles, falcons.

18 Q I take it there are also no roads?

19 A There is no roads. No facilities whatsoever. The area
20 is--would be extremely difficult, if not inaccessible, by foot.

21 Q In any of your monitoring inspections for subsidence or
22 anything else, have you been able to determine if the mining
23 in that area has had any impact at all?

24 A There is no evidence of any surface impacts.

25 Q Do you see that there is any possibility of any impact

extremely difficult, if not

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1 there other than for any other mine, using this standard room
2 and pillar method of mining?

3 A I think a comment made by one of the individuals with
4 the Division that flew it was that maybe subsidence would en-
5 hance the area.

6 Q Whether that be the case or not, there hasn't been any
7 subsidence?

8 A No, sir, there has been no subsidence and no damage
9 observed.

10 MR. KINGSTON: No further questions of this witness.

11 MS. ROBERTS: No questions.

12 MR. KINGSTON: Call Bill Stoddard as a witness.

13 BILL STODDARD

14 called as a witness on behalf of the petitioner,
15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. KINGSTON

17 Q Mr. Stoddard, will you state your name and address for
18 the record, please.

19 A My name is Bill Stoddard, and my address is P.O. Box 300,
20 Huntington, Utah.

21 Q Are you employed, Mr. Stoddard?

22 A Yes.

23 Q By whom?

24 A By Co-Op Mining Company.

25 Q What's your position with Co-Op Mining Company?



1 A I'm the manager of production, underground production.

2 Q Is part of your responsibility determining where to mine
3 and what sequence, this type of thing?

4 A Yes.

5 Q Was it your responsibility in commencing the mining
6 operation at Bear Canyon to determine where you would mine
7 in that canyon?

8 A Yes.

9 Q I'm going to show you what has been marked as Exhibits
10 17 and 18, which are two maps. I'm going to ask you, Mr.
11 Stoddard, to tell us why the original permit boundary did not
12 include this incidental boundary change.

13 A I think originally it did. This--when I looked over this
14 property and we decided where we were going to mine, why, the
15 lease that we had with C.O. Development included this area.
16 And so my instructions was to include all this in our permit
17 area, and that's where we would mine. That was my understand-
18 ing. As a matter of fact, our original maps had that area
19 in it. And so I was unaware of the fact that the permit area
20 didn't follow our lease area.

21 Q When did you first learn that you had a problem with your
22 boundary permit area?

23 A I became aware of it when the violation was issued.

24 Q Did you know that you were mining outside of the permit
25 area when you were conducting mining activity there?



1 A No, I didn't.

2 Q Did you conduct your mining operations in that area any
3 differently than you did any place else in Bear Canyon Mine?

4 A No.

5 Q Is there anything that you know of, any facts that you
6 are aware of that would lead you to believe that your mining
7 activity there would cause any different effect on the surface
8 or on the underground water than any other part of your mine?

9 A No. We took the same care there.

10 Q When you learned that you had the boundary problem, what
11 did you do to correct it?

12 A We applied for a change in our permit area.

13 Q That's all you did?

14 A That's all we did.

15 Q Was the change approved?

16 A Yes.

17 Q And, of course, the area had already been mined?

18 A Yes.

19 Q Did you ever intend to mine outside of the boundary area?

20 A No.

21 MR. KINGSTON: No further questions.

22 CHAIRMAN WILLIAMS: Ms. Roberts.

23 CROSS-EXAMINATION BY MS. ROBERTS

24 Q Mr. Stoddard, has Co-Op Mining Company at any other time
25 mined outside of its permit area?



1 MR. KINGSTON: I'm going to object to that as
2 irrelevant.

3 MS. ROBERTS: I think it's very relevant to the
4 amount of the assessed penalty and the state of mind and
5 deterrence.

6 CHAIRMAN WILLIAMS: I'll sustain the objection.

7 MS. ROBERTS: I have no further questions, but I'd
8 like to recall Ken Wyatt.

9 CHAIRMAN WILLIAMS: Very well. Did you have any
10 questions?

11 MR. KINGSTON: No. No redirect, and I don't have
12 any other witnesses.

13 CHAIRMAN WILLIAMS: Go ahead.

14 KEN WYATT

15 recalled as a witness on behalf of the respondent,
16 having been heretofore duly sworn, testified further
17 as follows:

18 DIRECT EXAMINATION BY MS. ROBERTS

19 Q Mr. Wyatt, are you aware of any studies or premining
20 studies that were done on the area mined prior to it being
21 mined?

22 MR. KINGSTON: Which mine? Excuse me.

23 Q (By Ms. Roberts) With regard to the area outside the
24 permit boundary that is at issue that has been mined, are you
25 aware of any premining studies that were done pursuant to this



1 area?

2 A As far as ground water and everything?

3 Q Ground water, et cetera.

4 A No. I am not aware of any.

5 Q Isn't it true, when the Division of Oil, Gas, and Mining
6 issues a permit, that extensive ground water studies, subsi-
7 dence monitoring, et cetera, are done prior to the issuance
8 of a permit?

9 A Yes.

10 Q Isn't it true that these studies are done as base line
11 studies to compare postmining effects?

12 A Yes.

13 Q Therefore, if no premining studies were done, there is
14 no way to determine what the postmining effects will be with
15 regard to ground water monitoring, et cetera?

16 A You wouldn't find much as far as the ground water, but
17 you would be able to observe visual subsidence should it occur.
18 Another thing I might add is with the subsidence you may not
19 see that for five years, ten years, in a mined area.

20 MS. ROBERTS: Thank you. No further questions.

21 CROSS-EXAMINATION BY MR. KINGSTON

22 Q Mr. Wyatt, I agree with you that it's true that you may
23 not see it for five or ten years; but what effect would a
24 change in the permit boundary have on the subsidence? What
25 effect would it have on subsidence, whether it were mined



1 before the boundary were changed or after the boundary were
2 changed?

3 A The boundary change would not affect the subsidence.

4 MR. KINGSTON: No further questions.

5 CHAIRMAN WILLIAMS: Does the Board have any questions?

6 MR. McINTYRE: I do. I direct my question to both
7 counsel. At the present time, has there been any major or
8 minor damage to the area that has been mined off the permit
9 section?

10 MR. KINGSTON: There has been none; and, in fact,
11 it's in the permit now.

12 MR. McINTYRE: All right.

13 MR. KINGSTON: Is that correct, Ms. Roberts?

14 MS. ROBERTS: It's my recollection that that had
15 been subsequently included in the permit. As for damage, I'm
16 not aware of any in the one year that it has been since that
17 mine has been mined, that area has been mined.

18 MR. McINTYRE: We're not violating so many years
19 down the road, are we?

20 MS. ROBERTS: Pardon?

21 MR. McINTYRE: In other words, there is no damage
22 now, but I'm trying to get in my mind. No damage has been
23 done except mined off the permit area. The actual physical
24 damage to the ground, there is nothing?

25 MS. ROBERTS: Mr. McIntyre, the Division, as Mr.



1 Wyatt has testified, the subsidence would be visual, but any
2 other damage to the area we would not know about, because there
3 were no premining studies done in this area.

4 MR. MCINTYRE: Thank you.

5 CHAIRMAN WILLIAMS: Mr. Lof, could you tell me again
6 how you arrived at the extent of damage points?

7 MR. LOF: Like I say, I didn't do the assessment.

8 CHAIRMAN WILLIAMS: How did the Division arrive at
9 the extent of damage points?

10 MS. ROBERTS: On the proposed or finalized?

11 CHAIRMAN WILLIAMS: Either.

12 MS. ROBERTS: May I answer that?

13 CHAIRMAN WILLIAMS: Surely.

14 MS. ROBERTS: The points are assessed for whether
15 or not the--any damage potential or actual, would have occur-
16 ed within the permit boundary or outside of the permit boundary.
17 So, therefore, the threshold, of course, is outside the permit
18 boundary. That was what the violation was written for.

19 With regard to the extent of damage, on the proposed
20 violation, the potential subsidence was the reason why the
21 points were higher.

22 CHAIRMAN WILLIAMS: The range is 8 to 25?

23 MS. ROBERTS: That's correct. And then an assess-
24 ment conference--Officer Lundberg dropped that to 18 as a re-
25 sult of evidence that the subsidence would be less than



1 originally expected.

2 CHAIRMAN WILLIAMS: Thank you. Anything further?
3 All right. Do you wish to make a closing statement?

4 MS. ROBERTS: Yes, Mr. Chairman. I would like to
5 initially point out that this law is a public purpose law.
6 It is not on the books for protection of private persons alone.
7 It is an environmental law to protect the land and water re-
8 sources for all of the people. These regulations were designed
9 to protect the environment from the effects of coal mining,
10 culverts to direct water into sed ponds, keeping the sediment
11 pond capacities available to contain the calculated storm
12 runoff. These regulations are in place to protect against
13 water pollution. That is the event that the rules and the
14 statutes are designed to protect against.

15 However, whether or not water pollution occurs will
16 be reflected in the amount of the civil penalty. The violation,
17 the violation of the regulations, or the violation of the
18 statute, will stand whether or not a civil penalty is assessed.
19 The points are assessed for damage and negligence and, in
20 general, offsite-onsite type damage.

21 No discharge into the sedimentation pond, keeping
22 culverts open--those are the regulations that were violated.

23 The stated objective of this Board is to deter vio-
24 lations, deter violations with the civil penalty system. That
25 is the Underground Mining Code, UMC 845.2, which is in the



1 handout I gave you. That's the stated objective of this Board.
2 If a permittee, or just an operator, mines outside the permit
3 area, or just mines in the middle of nowhere, does that mean
4 that if there was no damage that occurs, that we allow it to
5 happen? That is not what this law was enacted for.

6 We have to assess our civil penalties to create a
7 deterrent effect, so that the permits will be acquired, so
8 that we can do the premining studies, that we can find out
9 what the projected impact is going to be on these lands, and
10 to protect them from there.

11 Now, the State has proven the violations that are
12 on appeal today. The Co-Op was not maintaining the culvert.
13 It became blocked with ice. That is a violation.

14 As a result, water was intentionally being diverted
15 into a clear water ditch. That goes to the civil penalty
16 points. And the State has proven that the addition of sedi-
17 ment to Bear Creek has most likely occurred and that it has
18 impacted or has a potential to impact offsite areas. That
19 goes to the civil penalty, not the violation. The violation
20 was to keep the culvert open and have the water flowing into
21 the sediment pond; and whether or not the damage was a result
22 of intentional act on the part of Co-Op employees or their
23 agents, again, goes to the negligence points on the civil
24 penalty.

25 With regard to the discharge of water into a



1 sediment pond, the State has proven that Co-Op was discharging
2 that water and it was flowing toward the sediment pond.
3 Whether or not someone was standing there watching it flow
4 into the sediment pond is not at issue for the violation.
5 That is at issue for the civil penalty points. If the
6 Division inspectors or OSM inspectors were required to see
7 the damage that has occurred every single time, there would
8 not be many violations written. We cannot have someone onsite
9 at all times. That is why the point system is calculated
10 in such a way to accommodate potential damage, as well as
11 actually occurred damage.

12 The State has also shown that the Co-Op failed to
13 abate the discharge from the pipe, therefore incurring the
14 failure to abate C.O. And whether or not a particular person
15 was there to receive correspondence from the Division of Oil,
16 Gas, and Mining does not make it any less, make Co-Op any
17 less obligated to comply with the statutes and regulations
18 of the State. Co-Op is responsible for providing an agent
19 for compliance.

20 Finally, with regard to the offsite mining, again,
21 the violation occurred. The amount of the damage must be
22 set at the intentional level. Who else knows where they are
23 mining? We must have these premining studies done. If not,
24 we have not way of protecting the environment, which is the
25 objective of the statute.

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1 The State has proven the offsite damage, that off-
2 site damage has occurred; and, therefore, in relation to the
3 deterrent effect and the effect that the Board may take into
4 consideration, as well as the assessment conference officer,
5 the economic benefit that has been gained by the operator
6 as a result of their violation, these violations, the offsite
7 mining, as well as the other, the violations should stand
8 as written. We have supported them. The assessment confer-
9 ence officer has evaluated them. They should stand as written
10 with the amounts as assessed.

11 Thank you.

12 CHAIRMAN WILLIAMS: Thank you. Mr. Kingston.

13 MR. KINGSTON: Mr. Chairman, members of the Board,
14 first, with regard to the violation written regarding the
15 culvert, I think the evidence has established that rather
16 than being in violation of the regulations that the Division
17 has promulgated and the Board, Co-Op Mining Company was merely
18 trying to comply, and in fact were complying. The testimony
19 of Mr. Coonrod was that he was the one that called the
20 Division, told Mr. Lof: "We've got a problem down here.
21 Our culvert is full of ice. We are going to have to take
22 some corrective measures to fix that."

23 Mr. Lof's response was, "Submit a plan." Or, as
24 he wrote in his report: "Let the water to continue to run
25 through, and it will somehow dissipate the ice."



↓ wasn't / was

↓ wasn't

1 Mr. Coonrod told Mr. Lof: "That's not going to
2 work. The water has been running through for a few days now,
3 and it continues to build up."

4 And Mr. Coonrod explained why that happened. At
5 the point he talked to Mr. Lof, it **wasn't just about full.** It
6 was full. Something had to be done. He couldn't submit a
7 plan and wait for a week or a month or two months or longer
8 than that, as the case has been many times, for the Division
9 to say, "Okay, let's fix it in this manner." Something had
10 to be done, allowing the water to continue to run hadn't done
11 anything to enhance the problem.

12 Now, it's important to note, members of the Board,
13 that Mr. Coonrod testified, and it **wasn't controverted by the**
14 State, that that culvert was designed by an engineer. The
15 plan to build that culvert was submitted to the Division.
16 The Division approved that plan, and the culvert was construct-
17 ed and built pursuant to that plan which was approved.

18 Now, obviously, as the Division knows and as the
19 members of the Board know, regardless of how good your plan
20 is, how good your measures are, you've still got to contend
21 with Mother Nature. It's going to rain, and water is going
22 to run. It's going to snow. The water is going to freeze,
23 and that's going to create different circumstances. The wind
24 is going to blow, and you're going to get an erosion factor.

25 That's why the regulations require maintenance.



1 That's why the regulations require a monitoring system. Co-Op
2 Mining Company did that.

3 The regulation says, "Appropriate sedimentation
4 control measures shall be designed." That was done.
5 "Constructed". That was done. "And maintained, using the
6 best technology currently available to," and then it gives
7 you certain things you have to do.

8 But, notice, each one of those conditions say,
9 "to the extent possible."

10 Again, when the water freezes in a hole two or three
11 feet deep, it creates a backlog of ice in the culvert that's
12 designed to let that water run through, and you've got to
13 take corrective measures. The only thing that could be done
14 was done. They diverted that water so they could get to the
15 ice, melt that ice off, remove the block from the culvert,
16 and allow the water to continue to run.

17 The testimony has been that the amount of water
18 that was flowing around when it was diverted was less than
19 a gallon a minute, and it flowed at the maximum of three hours
20 on one day, and it didn't ever get off the permit area. It
21 didn't even get to the control measures that were set up by
22 Mr. Coonrod to control those things.

23 Again, Mr. Coonrod, in doing that, he was complying
24 with the regulation that requires him to do those things which
25 will create the least disturbance to the area and the least



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1 pond.

2 Obviously, the sediment pond is to control the water,
3 and that's exactly where it would have gone had there been
4 enough volume there to do that. Mr. Lof's testimony was 25
5 gallons per minute. When reminded that he had written 15
6 to 25, he changed his testimony.

7 Mr. Coonrod's testimony was that he had to measure
8 that water for the Board of Health, and his measurements were
9 five gallons per minute or less. Again, it wasn't a constant
10 flow of water. It was on this one occasion only. Mr. Lof
11 himself testified that he had made numerous other inspections
12 and seen that situation, and no water other than a simple
13 little trickle had been flowing from that source. It wasn't
14 something that Co-Op had to include in their mining permit
15 application, because it wasn't an occurrence that always
16 occurred. It was a measure that Co-Op took to correct a broken
17 pipe.

18 Again, at the time that happened, it was in the
19 springtime. No chance of any 10-year or 24-hour event.
20 Mr. Lof testified that the level of the pond at that time
21 was two or three inches below the dewatering device. And
22 then the testimony of Mr. Coonrod, I think, exemplified the
23 problem we have got down there **with one inspector.**

24 Mr. Lof was asked if he should at that point in
25 time plug up the flow of water. He instructed: "No, I'll

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erase "where," & close gap

1 go back to the office and find out and let you know."

2 Mr. Coonrod said: "I'm going to be leaving town.
3 I'll be gone for a couple of weeks. Please let me know if
4 we've got a problem, so I can correct that before I go."

5 Incidentally, the Notice of Violation was mailed
6 from Salt Lake City, the exact day that Mr. Coonrod had told
7 Mr. Lof he was going to leave and be gone for ten days. Mr.
8 Coonrod gets back and finds not only the Notice of Violation,
9 but also a C.O., a closure order.

10 Again, this wasn't mine water. It had nothing to
11 do with mining activity. It wasn't a constant source of water.
12 It simply does not fit within the regulation cited, which
13 is a catchall, not mining within the parameters of the mining
14 application.

15 We would submit that the NOV was improper, and
16 certainly the C.O. was improper under the circumstances.

17 Now, regarding the last one, the mining outside
18 of the permit area, this one we concede. We made a mistake.
19 The violation was properly written. Mr. Wyatt did what he
20 had to do.

21 The facts have shown, however, that the mining
22 activity in that particular section took place before the
23 NOV was written; and, again, we were wrong to do that. We
24 had given the Division improper information regarding where
25 the permit boundary was. That wasn't known to Mr. Stoddard,



1 who was the underground foreman, in charge of determining
2 where they are going to mine and in what sequence they are
3 going to mine. It was his understanding and he thought that
4 the people preparing the maps were including that area within
5 the permit area, and in fact it had always belonged to Co-Op
6 Mining Company. It was part of their lease area. They always
7 intended to mine but in fact, other maps they had submitted
8 to the Division showed their intent and their actual mining
9 activity.

10 But, again, it was wrong. It wasn't knowing. It
11 wasn't intentional. In fact, what happened was that one
12 individual gave the map maker the wrong description; and,
13 rather than jogging down to include that, he simply wrote
14 the boundary straight across. Again, that was our agent,
15 and we were wrong to do it.

16 But, again, the mining activity there was the very
17 same as the mining activity in the rest of Bear Canyon. The
18 damage could be no different, the potential could be no
19 different, than the potential for any other mining activity,
20 because nothing was changed. The only thing that we did to
21 correct that was to change the boundary line. It was a cleri-
22 cal error, simply a clerical error; but it was our error,
23 and we're stuck with the violation. But there has been no
24 showing of any damage, there hasn't been any showing of any
25 intent, or even of any knowledge, until that was pointed out



1 by the Division.

2 Just one more point on the amount of the violation.
3 If you'll notice the formula that was given to you by Ms.
4 Roberts, the maximum penalty that can be assessed on these
5 things is \$5,000. Now, you have one situation here where
6 we're mining outside the permit area. The corrective activity
7 taken, without the showing of any damage at all, is to change
8 the line on the map.

9 The Division has assessed Co-Op \$3,000 for that
10 violation. And the other situation, you have an honest effort
11 by Co-Op Mining Company, and which I submit was complying
12 with the regulations, rather than violating the regulations,
13 where you got less than one gallon per minute of water running
14 from one area to another, never ever reaching outside the
15 permit area. And, again, you have a violation of \$3,000.

16 Whether you use the formula provided by the regu-
17 lations or whether you use your own formula, there has got
18 to be some rhyme and reason for the amount of penalties in
19 these things if you want to maintain any credibility at all.

20 I would submit that the \$3,000 penalty, even if
21 a violation were found in either one of these situations,
22 is just so grossly excessive that it just can't be substantiat-
23 ed or supported and ought not to be.

24 I would submit that with regard to the first three
25 violations we heard today that they weren't in fact violations.



1 They ought to be vacated.

2 With regard to the other violation, assessed viola-
3 tion on mining outside the permit area, we acknowledge that
4 was a violation. We did something wrong. We should suffer
5 the penalty for that, but the penalty ought to be commensurate
6 with the amount of damage or the degree of fault, and it
7 ought to be substantially reduced.

8 Thank you very much.

9 CHAIRMAN WILLIAMS: Thank you.

10 We will receive Exhibits 13 through 18. For the
11 record, I believe those are all those exhibits. In any event,
12 we intend to receive all that were offered.

13 (Exhibits 13 through 18 were
14 received in evidence.)

15 Is there anything further on this? Let's recess
16 until 3.

17 (Recess from 2:46 p.m. until 3:01 p.m.)

18 CHAIRMAN WILLIAMS: All right. The Board has taken
19 the Co-Op matter, Docket No. 85-053, under advisement. We
20 can go to the remaining item on the agenda.

21 (Recess from 3:01 p.m. until 5:16 p.m.)

22 CHAIRMAN WILLIAMS: Back on the record. The Board
23 has considered Docket No. 85-053, which is the Co-Op Mining
24 Company appeal of certain violations and Cessation Orders.

25 With respect to Notice of Violation N85-4-8-2, two



1 of two, the Board finds that a violation occurred as described
2 in the Notice of Violation. The Board has considered the
3 various points assessed and has determined that points should
4 be modified as follows: that the probability of occurrence
5 points should be reduced from 14 to 10; that the extent of
6 damage points should be reduced from 21 to 16; and that the
7 negligence points are proper at 28. By our calculations that
8 comes to total points of 60 and results in a fine of \$1,380.

9 (Discussion off the record.)

10 With respect to the Notice of Violation for
11 N85-4-13-1, one of one, the Board finds that a violation
12 occurred as described in the violation, but reduces the extent
13 of damage points from 9 to 5; it leaves the other points as
14 determined by the conference assessment officer. By our
15 calculations that makes the total points 19 and the assessed
16 fine \$190.

17 With respect to the Cessation Order issued for
18 C85-4-4-1, the Board finds that the Cessation Order was pro-
19 per, was properly issued and served, and that the number of
20 days of failure to abate is 1 day and the fine should, there-
21 fore, be \$750. So that there is no change from what was
22 determined by the conference assessment officer.

23 With respect to the final matter, which is C84-7-1-1,
24 the Board finds that the violation occurred, properly result-
25 ing in the issuance of a Cessation Order, but that the extent



1 of damage points should be reduced from 18 to 15 and the
2 negligence points should be reduced from 30 to 25. By our
3 calculations, that results in total points of 61 and a fine
4 of \$1,460.

5 Does anybody have anything to add to that? Is there
6 anything else to come before the Board?

7 We're adjourned.

8 (At 5:20 p.m. the hearing ended.)

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C E R T I F I C A T E

State of Utah)
) ss
County of Salt Lake)

I, Ronald F. Hubbard, do hereby certify that I am a
certified shorthand reporter in and for the State of Utah;
that I reported in shorthand the foregoing proceedings; that
that this transcript is a full, true, and correct record of
said proceedings.

Dated at Salt Lake City, Utah, this 8th day
of November, 1985.

Ronald F. Hubbard
Ronald F. Hubbard
Certified Shorthand Reporter
License No. 32

